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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 0036 (JPO)

5 DAVID MIDDENDORF and JEFFREY  
6 WADA,

7 Defendants.

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9 February 20, 2019  
10 9:36 a.m.

11 Before:

12 HON. J. PAUL OETKEN,

13 District Judge  
14 and a jury

15 APPEARANCES

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United States Attorney for the  
Southern District of New York

17 BY: REBECCA G. MERMELSTEIN

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## APPEARANCES CONTINUED

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Attorneys for Defendant Jeffrey Wada

BY: STEPHEN COOK

JUSTIN S. WEDDLE

SELBIE JASON

- and -

LATHAM &amp; WATKINS

BY: JASON MASASHI OHTA

- also present -

Lyeson Daniel, Postal Inspector

Virginia Faughnan, Postal Inspector

Luke Urbanczyk, Government Paralegal

Nathaniel Cooney, Government Paralegal

Kiezia Girard-Lawrence, Postal Inspector

Stephanie O'Connor, Defendant Middendorf paralegal

Sarah Chojecki, Defendant Wada paralegal

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1 (Jury not present)

2 THE COURT: Good morning.

3 MS. KRAMER: Good morning.

4 THE COURT: How much longer do you think you have for  
5 direct?

6 MS. KRAMER: I think I'll finish by or around  
7 lunchtime.

8 THE COURT: OK. I received defendant Wada's counsel's  
9 letter regarding extrinsic evidence, and I don't know that we  
10 need to address it today. Do you think we -- I mean, right at  
11 this minute? Can we wait until lunch, or do you want to  
12 address it now?

13 MS. KRAMER: I think we can wait until lunch, your  
14 Honor. It is unlikely that cross would begin before lunch.

15 MR. WEDDLE: I don't think we are even asking for a  
16 ruling, your Honor. I think the reason is to set out the law  
17 because I disagree with the way it was described in court  
18 yesterday, but I think that your Honor can make the decision on  
19 a exhibit-by-exhibit basis.

20 THE COURT: OK. Anything else before we bring the  
21 jury in?

22 MS. KRAMER: Yes, your Honor. We have one more issue  
23 about the cross-examination of Brian Sweet that we understand  
24 is still in dispute based on my conversations with Wada's  
25 counsel, but that can also be taken up at lunchtime.

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1 THE COURT: OK. Anything else?

2 All right. We will bring in the jury.

3 (Continued on next page)

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1 (Jury present)

2 THE COURT: Please be seated.

3 Good morning, ladies and gentlemen.

4 JURORS: Good morning.

5 THE COURT: Welcome back.

6 JURORS: Thank you.

7 THE COURT: I hope you all had a good night.

8 We're continuing with the testimony, the direct  
9 testimony, of a witness.

10 And Ms. Kramer, you may proceed.

11 MS. KRAMER: Yes, your Honor.

12 Would you like to remind the witness that he is still  
13 under oath?

14 THE COURT: Yes.

15 Mr. Sweet, you are still under oath when you were  
16 sworn was it yesterday, yes, yesterday. Thank you. You are  
17 still under oath.

18 MS. KRAMER: Thank you, your Honor.

19 BRIAN JOHN SWEET,

20 Resumed, and testified further as follows:

21 DIRECT EXAMINATION

22 BY MS. KRAMER:

23 Q. Yesterday, Mr. Sweet, we were talking about the effects of  
24 the 2016 rereviews, so I would like to pick up there.

25 During the 2016 inspection season, were you tracking

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1 KPMG's performance on inspections?

2 A. Yes.

3 Q. How were you doing that?

4 A. As part of my role in the national office in the  
5 Inspections Group, I was on the distribution for every  
6 inspection that the PCAOB was conducting internally. So at the  
7 end of the field work, we would be notified by any of the  
8 liaisons of whether or not the PCAOB was intending to write a  
9 comment form or not.

10 Q. What's your understanding of how the liaisons knew at the  
11 end of an inspection whether or not the PCAOB intended to write  
12 a comment?

13 A. I served as a liaison as well, so I know from direct  
14 experience that at the end of the field work week, the PCAOB  
15 Inspection Team would meet with the KPMG Engagement Team and  
16 have what they called a final status meeting, kind of like a  
17 closing meeting to the week, where they would communicate  
18 whether or not they were considering any issues for comment.  
19 And so if they said that they were not considering any issues  
20 for comment, that meant no comment forms would be issued.

21 Q. How did the firm do on the inspections of the engagements  
22 that were on the March 28th Wada list?

23 A. They did very well.

24 Q. Take a look at what's marked for identification as  
25 Government Exhibit 1439.

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1 Do you recognize this exhibit?

2 A. Yes, I do.

3 Q. How do you recognize it?

4 A. I recognize this to be a text message exchange between  
5 Cindy Holder and myself.

6 Q. From what date?

7 A. From June 6, 2016.

8 MS. KRAMER: The government offers Government Exhibit  
9 1439 subject to connection.

10 THE COURT: It is received.

11 (Government's Exhibit 1439 received in evidence)

12 BY MS. KRAMER:

13 Q. What were you and Cindy Holder discussing by text message  
14 on June 6, 2016 in Government Exhibit 1439?

15 A. This was a text message exchange about how the Century  
16 Bancorp inspection was going.

17 Q. In the second row, the row beginning with 4:07 p.m. Eastern  
18 Time, when you said, "joe did a very crappy job explaining the  
19 a particular issue," what were you talking about?

20 A. I was referring to Joe Gencarella, who is the lead audit  
21 engagement partner on Century, and it was in reference to one  
22 of the focus area interviews that Joe and the Engagement Team  
23 at KPMG was having with the PCAOB's Inspection Team on this  
24 investments focus area.

25 Q. And when you say they were having a focus area interview,

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1 is that the same thing as the focus area meetings you testified  
2 about yesterday?

3 A. Yes.

4 Q. When you wrote in the last sentence in that row, "Right now  
5 it's likely a comment so going to have to work hard to make it  
6 go away," what did you mean?

7 A. That based on the way I was observing the PCAOB's  
8 inspection to go, because I was sitting in on all of the same  
9 meetings with the Engagement Team, that the inspectors from the  
10 PCAOB seemed to be very concerned about the audit work in that  
11 particular area and seemed to be pressing on it as an issue.  
12 And so the reference to have to work hard to make it go away  
13 meant that we would have to make sure that the team was fully  
14 prepared to answer and talk about this potential issue the next  
15 day and point to all the other work that it had done that may,  
16 you know, compensate for what the PCAOB was concerned about.

17 Q. And in the sentence before that last one, you wrote, "It  
18 was their very first question." What significance to you did  
19 it have at all that this was their very first question, the  
20 inspectors' very first question?

21 A. That was pretty common for me as well while I was at the  
22 PCAOB as an inspector that during these focus area meetings,  
23 the start of the meeting, you would start with your biggest  
24 potential problem areas first, your biggest concerns first.

25 Q. And in your experience, does the explanation given by a



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1 member of an Engagement Team in one of these focus area  
2 meetings affect whether or not a comment is given?

3 A. Yes.

4 Q. How? What's your understanding of how the explanations  
5 given in these meetings affect whether or not comments are  
6 issued?

7 A. As part of the PCAOB's inspection, they thoroughly review  
8 the audit workpapers. So the written documentation this  
9 includes, but they also place a lot of weight on what they  
10 refer to other persuasive evidence, so what other factors and  
11 what context was the Engagement Team considering when they  
12 perform the procedures, the testing, that they did, and so  
13 that's why the PCAOB does inspections on site with the  
14 Engagement Team as they want there to be this Q & A process,  
15 this interview process, so they can really understand all of  
16 the things the team was thinking about.

17 Q. And in your experience, when an Engagement Team gives the  
18 strong answer, in contrast to the job that you're referencing  
19 Joe Gencarella did on Century Bancorp, does that affect whether  
20 a comment is issued?

21 A. Yes.

22 Q. How?

23 A. We would sometimes refer to it as the first best answer,  
24 meaning that when the PCAOB inspector asks a question, if they  
25 can give the best answer the first time, then that in and of

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1     itself exudes confidence, demonstrates the Engagement Team was  
2     very thoughtful and intentional about exactly what work they  
3     were trying to perform. And so being able to do that and avoid  
4     having second or third or multiple follow-up questions on that  
5     typically had a very strong correlation to whether or not there  
6     was ultimately a comment form or not.

7     Q. In the next line, at 4:08 p.m., Cindy Holder wrote back to  
8     you: "Darn it. That was the main question we prepped him  
9     for."

10           What was your understanding of what she was referring  
11     to when she talked about him being prepped for this question?

12     A. I believe she was either referring to both the work that  
13     had been done as part of the rereview process, but then  
14     following the PCAOB's notification of the firm, the national  
15     office also does an advance review of the workpapers again to  
16     help identify potential problem areas and Cindy was involved in  
17     that as well, and so I think it's referring to either one of  
18     those.

19     Q. OK. And then at 4:09 p.m. you wrote: "No kidding. And I  
20     talked him through it this morning."

21           Had you had another discussion with Joe Gencarella  
22     about this issue that morning?

23     A. Yes.

24     Q. Why?

25     A. I was -- again, I was the PCAOB -- the KPMG national office

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liaison assigned to support the Century bank inspection, and I was aware of this issue and had thought it was a soft spot or a potential problem area in the files, and so I had spent time with Joe talking through that issue and how he was going to respond and wanted to make sure that he was ready for the question when it came.

Q. To what end?

A. So that, again, he could give the best first answer to the PCAOB and really come across as confident and articulate and thorough in his response.

Q. Let's talk specifically about Sallie Mae.

Did the inspection of Sallie Mae result in any comments in 2016?

A. Yes.

Q. About what?

A. I don't remember specifically which focus area but it was a confirmations-related comment form.

Q. Can you explain as simply as possible what "confirmations" is, or are?

A. Yes. So one of the things an auditor would do commonly as part of their audit would be to send letters to verify a balance. So, for example, if a company said they had this amount of cash on their -- as one of their assets, on their balance sheet, then what an auditor might do would be to send out a letter to the bank where that cash was deposited and

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1 confirm that they really did have as much cash as they had on  
2 hand. So, it's a common audit procedure just to test the  
3 existence and the accuracy and the completeness of a particular  
4 balance.

5 Q. And do you remember the problem with the Sallie Mae  
6 confirmations that the PCAOB wrote a comment about?

7 A. Yes.

8 Q. What was that problem?

9 A. The PCAOB was concerned about the sampling process that the  
10 Engagement Team had gone through, meaning that they didn't  
11 think that the engagement team had sent enough confirmations  
12 out for the particular area that they were testing.

13 Q. Did this comment come up at any KPMG conferences?

14 A. Yes.

15 Q. When did it come up?

16 A. It came up in the June 2016 banking partner manager  
17 conference.

18 Q. How did it come up?

19 A. Because Sallie Mae was one of the first inspections that  
20 the PCAOB had performed that season, it was already completed  
21 by the time this conference came up. And David Britt, my  
22 understanding, discussed the comment while he was on stage  
23 making one of the presentations and saying here's an issue that  
24 the PCAOB identified this year and, you know, all you banking  
25 partners and managers need to be aware of this, this type of

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1 issue in your own audits.

2 Q. Did you have any conversations with Cindy Holder about  
3 that?

4 A. Yes.

5 Q. What did she tell you?

6 A. She told me about what David had said on stage and about  
7 this issue and ultimately that one of the engagement teams was  
8 going to take additional action as a result of that.

9 Q. Which Engagement Team did she tell you was going to take  
10 additional action as a result of that?

11 A. The People's Financial Audit Engagement Team.

12 Q. Was People's on the March 28th, 2016 Wada list?

13 A. Yes, it was.

14 Q. Who was the engagement partner on People's?

15 A. The lead engagement partner was Peter Torrente.

16 Q. Was People's part of the stealth rereview that you  
17 participated in in 2016?

18 A. Yes.

19 Q. Do you have any conversations with Peter Torrente in the  
20 spring of 2016 about the rereview?

21 A. Yes.

22 Q. And do you remember what, if anything, he said about his  
23 understanding of the reason for the rereviews?

24 A. He told me that he had spoken with David Britt and  
25 understood why we were doing what we were doing.

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1 Q. What did you understand that to mean?

2 A. That he knew that People's was going to get inspected by  
3 the PCAOB that year and that the reason that we were doing this  
4 stealth rereview was to help ensure that the audit work was  
5 documented as well as possible.

6 Q. Do you know what actions the People's Engagement Team took  
7 after learning that Sallie Mae had been issued a comment about  
8 the number of confirmations it had sent out?

9 A. Yes.

10 Q. How do you know that?

11 A. I know that from both my conversations with Cindy Holder  
12 but also my conversations with John Broderick, who ended up  
13 being the KPMG national office liaison that worked on that --  
14 the PCAOB inspection.

15 Q. What do you understand the People's Engagement Team to have  
16 done after learning about this issue with the Sallie Mae  
17 comment?

18 A. After hearing about the issue at this banking partner  
19 manager conference, the People's Engagement Team went back into  
20 their files to see if they had had the same issue in their  
21 audit workpapers. They identified that they did have that same  
22 issue and then decided to perform a special audit procedures  
23 for the prior audit even though it was, you know, closed and  
24 complete, you know, the workpapers had been archived at that  
25 point. They documented under one of the special accounting or

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1 auditing rules and performed the additional procedures to kind  
2 of fix that work.

3 Q. Did they comply with the auditing standards in terms of  
4 documenting the additional work?

5 A. Yes.

6 Q. What's your understanding about why they went in to do that  
7 additional work?

8 A. Because they knew that the PCAOB was going to be inspecting  
9 People's and that that announcement would come from the PCAOB  
10 fairly soon and that it would be better for them if they had  
11 self-identified and self-fixed this work before the PCAOB came  
12 in to look at it.

13 Q. Did the PCAOB inspect People's?

14 A. Yes.

15 Q. And what, if anything, did the PCAOB initially indicate it  
16 would issue a comment about?

17 A. They initially indicated that they were going to write a  
18 comment in that same area because the original audit work  
19 didn't -- hadn't had the same issue around confirmations and  
20 sample sizes.

21 Q. Do you know how the firm responded?

22 A. Yes.

23 Q. How?

24 A. The firm told the PCAOB that because -- that while it was  
25 true in the original set of workpapers that the Engagement Team

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1 had self gone in and corrected this issue, after hearing about  
2 it at the partner manager conference and that the PCAOB should  
3 consider this fixed work as part of it's valuation.

4 Q. What's your understanding of whether or not the PCAOB then  
5 issued a comment on confirmations, as it had said it was going  
6 to?

7 A. I believe they may have issued the comment, but they  
8 ultimately decided that they were not going to consider that  
9 comment for the report. They ended up agreeing with the firm's  
10 view and determined that that would not be an issue that they  
11 considered for Part I of their inspection report.

12 Q. So this comment did not end up in Part I of the inspection  
13 report or the PCAOB said it was not going to?

14 A. Yes.

15 Q. Do you know what effects, if any, the additional work that  
16 the Engagement Team had done had on the PCAOB's decision not to  
17 put this in Part I?

18 A. That that was the reason that they decided not to, because  
19 the team had gone and done that work, the PCAOB did not want to  
20 write the comment -- or consider this an issue because the team  
21 had taken these additional steps.

22 Q. What's your understanding of whether or not the Engagement  
23 Team told the PCAOB why it had gone in to do the additional  
24 work?

25 MR. COOK: Objection. Speculation.



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1 MS. KRAMER: I can rephrase, your Honor.

2 THE COURT: Please.

3 BY MS. KRAMER:

4 Q. Do you have an understanding, based on conversations you  
5 had, as to whether or not the Engagement Team told the PCAOB  
6 that it knew it was going to be inspected?

7 MR. COOK: The same objection, your Honor.

8 THE COURT: Overruled.

9 A. Yes, I do.

10 Q. What's your understanding of that?

11 A. The Engagement Team did not tell the PCAOB that we had  
12 received stolen confidential information and knew that People's  
13 was going to get inspected. They said that they did this just  
14 in the normal course of learning about a potential area, or  
15 issue, and going back and kind of self-correcting their  
16 workpapers.

17 Q. Are you familiar with the term "positive quality events"?

18 A. Yes.

19 Q. What do you understand that to mean?

20 A. Positive quality event is a PCAOB term that is used for an  
21 audit that goes really, really well.

22 Q. Who makes the decision about whether an audit is a positive  
23 quality event?

24 A. The PCAOB does.

25 Q. And why, in your understanding from your experience at the

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1 PCAOB, does the PCAOB classify some audits as positive quality  
2 events?

3 A. This ties back to what we were discussing yesterday about  
4 these root cause analysis. That one of the things the PCAOB  
5 Inspection Team does as part of its, you know, national office  
6 procedures is to evaluate the firm's overall system of quality  
7 is they want to understand what were the underlying factors  
8 that may have caused an audit to be really, really good or, in  
9 turn, what were the underlying factors that caused an audit to  
10 be really, really bad, when there would be a negative quality  
11 event. So, they would look at those root causes.

12 Q. And does the PCAOB classify some audits as negative quality  
13 events?

14 A. Yes.

15 Q. Do you have an understanding of how many audits the PCAOB  
16 classifies as positive or negative quality events in a given  
17 year?

18 A. I don't know the total number, but from my experience when  
19 I was at the PCAOB, because I worked with primarily in the  
20 banking practice, there were always a few banks that made the  
21 cut of being negative quality events each year, so meaning  
22 really, really bad audits.

23 Q. And so when the PCAOB decides that an audit is a positive  
24 quality event, in your understanding, what does the PCAOB root  
25 cause subgroup then do with that audit?

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1 A. They make that determination after the inspection is done  
2 and so they will then ask the Engagement Team to have one more  
3 interview with them where they can talk through why the  
4 engagement team thought -- what the factors were that caused it  
5 to be, you know, really, really good or, again, for a negative  
6 quality event, really, really bad.

7 Q. How does the PCAOB notify the firm that an audit has been  
8 deemed a positive quality event?

9 A. One of the PCAOB inspectors assigned to this root cause  
10 subteam will notify usually the national office liaison that  
11 was assigned to support the firm or the Engagement Team through  
12 that inspection.

13 Q. Do members of the national office typically participate, in  
14 your experience, in the follow-up interview that the PCAOB has  
15 with the team about a positive quality event?

16 A. Yes.

17 Q. Do you recall whether or not any KPMG audits were  
18 identified by the PCAOB as positive quality events at the end  
19 of the 2016 inspections?

20 A. Yes.

21 Q. Which ones were?

22 A. I know that Century Bancorp, Banc of California, and TCF  
23 Financial were all identified as positive quality events.

24 Q. And were any of those part of the rereviews that you  
25 participated in after receiving the Wada list on March 28,

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1 2016?

2 MR. COOK: Objection. Characterization of the  
3 inspection list as the "Wada list."

4 MS. KRAMER: I can certainly rephrase, your Honor. I  
5 thought I was complying with your Honor's ruling yesterday.

6 THE COURT: Just clarify what you are talking about.

7 MS. KRAMER: Certainly, your Honor.

8 BY MS. KRAMER:

9 Q. Do you recall whether any of those three audits, Century,  
10 TCF or Banc of California, were part of the rereviews that you  
11 participated in after Cindy Holder shared with you the list of  
12 banking inspections for the -- that the PCAOB had for KPMG that  
13 she had received from Jeff Wada on March 28, 2016?

14 A. Yes.

15 Q. Which ones were part of the stealth rereviews?

16 A. Both Century Bancorp and Banc of California were two of the  
17 rereviews done for these stealth reviews.

18 Q. And to your knowledge, had TCF been subject to any  
19 additional rereview?

20 A. Yes.

21 Q. What kind?

22 A. TCF was one of the four banks that we had discussed  
23 yesterday that were done as part of the -- the camouflage, so  
24 there would be other engagements reviewed beyond just the seven  
25 that we knew were on that listing provided by Jeffrey Wada.

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1 Q. From your experience at the PCAOB on the KPMG Inspection  
2 Team and then at KPMG, had KPMG previously had banking audits  
3 selected as positive quality events by the PCAOB, to the best  
4 of your memory?

5 A. No. I was not aware of any instance where there had been a  
6 banking engagement that had been a positive quality event both  
7 from my time at the PCAOB and at KPMG.

8 Q. What's your understanding of the effect, if any, on the  
9 firm of the PCAOB choosing a banking engagement as a positive  
10 quality event?

11 A. It was a very big deal.

12 Q. Why?

13 A. Because most or a significant number of the comments in the  
14 prior years had been banking-related, and one of the Part II  
15 themes in the KPMG's report from the PCAOB in the prior years  
16 had been specific to these banking issues. For the bank then,  
17 and therefore for the firm, then in 2016 to not only have clean  
18 inspections, clean banking inspections with no comments, but to  
19 then have had three that were identified as not just, you know,  
20 passing but of such good quality that they were determined to  
21 be positive quality events gave both the PCAOB and KPMG a very  
22 significant data point to use in trying to explain that they  
23 had been taking such significant steps to fix past issues and  
24 keep the prior Part II section of the PCAOB's report nonpublic.  
25 Q. And to be clear, what does Part II of the report address,

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1 generally?

2 A. Part II of the PCAOB's annual reports addressed the  
3 thematic issues, so kind of the themes that the PCAOB  
4 identifies as a whole relating to the firm's system of quality  
5 control. So it's separate from the individual issuer  
6 inspections that are in Part I, which ones get comment  
7 forms. These are more of the themes that are included in Part  
8 II.

9 Q. And do you know which specific theme in the Part II of  
10 KPMG's inspection report the selection of these banking  
11 engagements as positive quality events was related to?

12 A. Yes.

13 Q. Which one?

14 A. There had been an allowance for loan loss in one of the  
15 banking areas, audit areas, there had been a theme for that  
16 kind of multiple years in a row at the PCAOB.

17 Q. And what was your understanding of the effect on the  
18 allowance for loan loss Part II comment of these banking  
19 engagements being chosen as positive quality events?

20 MS. LESTER: Objection. Asked and answered.

21 THE COURT: Sustained.

22 BY MS. KRAMER:

23 Q. Do you have any understanding as to whether KPMG cited the  
24 identification of these banking engagements as positive quality  
25 events in its efforts to convince the PCAOB that the ALL

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1 comment in Part II should remain nonpublic?

2 A. Yes.

3 Q. What's your understanding about that?

4 MR. COOK: Objection. Foundation.

5 THE COURT: Overruled.

6 A. My understanding was that that was something that the firm  
7 had been pointing to both in its monthly meetings with the  
8 PCAOB but that it was also something that they were pointing to  
9 in their response to the prior Part II additional remediation  
10 response that they had to write.

11 Q. Yesterday you testified about which of the banking  
12 engagements from the March 28th list of PCAOB inspections that  
13 Jeff Wada shared with Cindy Holder that she shared with you  
14 were actually inspected in 2016. Do you remember which ones  
15 those were?

16 A. Yes.

17 Q. Which ones?

18 A. The ones that had been subject to the stealth rereviews  
19 that ultimately got inspected were Century Bancorp, Banc of  
20 California, People's United, UMB Financial, and First Business  
21 Financial.

22 Q. Do you know in what areas, if any, those audits had  
23 previously received comments by the PCAOB?

24 A. I believe some of those were first-time inspections by the  
25 PCAOB, but I know Banc of California was one because I've

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1 worked on that inspection when I was at the PCAOB and I  
2 supported it through this liaison role in the rereview, and I  
3 know that they had received four comment forms the prior time  
4 that the PCAOB inspected. And it included the allowance for  
5 loan loss, investments, mortgage repurchase reserve, kind of  
6 the -- I was going to say just some of the significant banking  
7 areas that had been subject to that audit.

8 Q. Do you know what specific area KPMG banking audits had  
9 traditionally been receiving comments in by the PCAOB?

10 A. Yes.

11 Q. Which one?

12 A. The most common area of comment by the PCAOB had been  
13 within this allowance for loan loss area.

14 Q. And with respect to the allowance, was there a particular  
15 aspect of it that had previously been receiving comments in  
16 KPMG inspections?

17 A. Yes.

18 Q. Which one?

19 A. It's referred to as the general portion of the allowance  
20 for loan losses.

21 Q. And very simply, what does that mean?

22 A. That in calculating how much losses are inherent within a  
23 bank's kind of portfolio of loans that they would make, one of  
24 the things that they would calculate under the accounting rules  
25 is what the general reserve would need to be for those loans



J2kdmid1

Sweet - direct

1 evaluated as a whole.

2 Q. What does that mean, the general reserve?

3 A. That it's just -- it's one of the components of the  
4 allowance for loan loss calculation.

5 Q. In your understanding, is that a reflection of the  
6 allowance for a small group of loans or for the whole portfolio  
7 of loans?

8 A. For the majority of the loans but the biggest portion of  
9 the loans.

10 Q. Did any of the KPMG audits that were inspected that had  
11 been part of the stealth rereviews after you got the list on  
12 March 28th, did any of those get comments on the general  
13 reserve aspect of the ALL, to your knowledge?

14 A. No.

15 Q. And how did those inspections fare relative to the prior  
16 years' inspections of KPMG banking clients?

17 A. There had been a significant improvement of those  
18 inspections.

19 Q. From your experience at KPMG and your experience working on  
20 the rereviews and participating in the inspections that were  
21 subject to the rereviews, what is your understanding of why the  
22 results were so much better?

23 A. Because the workpapers presented the work in the best light  
24 possible, I believe that the rereviews had a very direct impact  
25 on the ultimate inspection outcomes.

J2kdmidl

Sweet - direct

1 Q. Did there come a time that you had any conversations with  
2 Dave Middendorf about the firm's performance on the 2016  
3 inspections?

4 A. Yes.

5 Q. How many conversations do you specifically remember having  
6 with him about that?

7 A. I remember at least one conversation.

8 Q. Approximately when did that conversation take place?

9 A. It was in the fall of 2016. I remember it was at the very  
10 end of the PCAOB's inspection cycle.

11 Q. Where were you when you had this conversation with Dave  
12 Middendorf?

13 A. I was in New York.

14 Q. For what?

15 A. I had just completed supporting one of the engagement teams  
16 through an inspection, a PCAOB inspection, and I remember going  
17 and meeting Dave Middendorf and Tom Whittle and others at a  
18 restaurant for dinner.

19 Q. Do you remember where in the restaurant you were when you  
20 had this conversation?

21 A. I remember we were -- yes.

22 Q. Where were you?

23 A. I remember we were standing around kind of the bar area at  
24 the end of the dinner.

25 Q. Who participated in this conversation with you and Dave

J2kdmidl

Sweet - direct

1 Middendorf?

2 A. Tom Whittle was also there.

3 Q. What did Dave Middendorf say to you about the inspection  
4 results?

5 A. I remember him saying how pleased he was that the  
6 inspection results had been so improved from the prior year. I  
7 remember him also pointing to the fact that there were so many  
8 clean banking inspections, including the ones that had been  
9 subject to the stealth rereviews, and that three of those had  
10 been subject to this positive quality event.

11 Q. Did there come a time in the fall of 2016 that you  
12 endeavored to predict the PCAOB banking selections for 2017?

13 A. Yes.

14 Q. Take a look at what's marked for identification as  
15 Government Exhibit 1067.

16 MS. KRAMER: Your Honor, may I have a moment, please?  
17 My screen is not working.

18 THE COURT: Sure.

19 MS. KRAMER: Thank you.

20 (Pause).

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 Q. How do you recognize it?

24 A. I recognize this to be an email that I sent from my KPMG  
25 email account.

J2kdmidl

Sweet - direct

1 Q. On what date?

2 A. On November 18, 2016.

3 MS. KRAMER: The government offers Government Exhibit  
4 1067.

5 THE COURT: 1067 is received in evidence.

6 (Government's Exhibit 1067 received in evidence)

7 BY MS. KRAMER:

8 Q. All right. What's the subject line of this email?

9 A. "Bank Screening Analysis."

10 Q. And who did you send this to?

11 A. I sent this to Tom Whittle.

12 Q. Could you read the first sentence of your email?

13 A. "Tom - attached is the screen analysis that Cindy and I  
14 pulled together based off of our own experiences of how the  
15 PCAOB performs its planning."

16 Q. Did you and Cindy Holder pull this together based only on  
17 your own experiences?

18 A. No.

19 Q. So that sentence was a lie?

20 A. Yes.

21 Q. What did you base this on aside from your own experiences?

22 A. Cindy and I also accessed that 2015 GNF Planning Profile  
23 that I had taken with me.

24 Q. Why did you not say in this email that the bank screening  
25 analysis that you had done was also based on the 2015 GNF

J2kdmidl

Sweet - direct

1 Planning Profile?

2 A. Because I wasn't sure how Tom would -- whether or not Tom  
3 would forward this email to anyone, and I also knew at that  
4 point that Tom was well aware that I had taken documents with  
5 me when I left the PCAOB.

6 Q. What was your concern about Tom forwarding this to someone?

7 A. That me -- if I had referenced this 2015 GNF Planning  
8 Profile, it would make it clear to anyone else reading this  
9 that I was -- we were basing this analysis in part on stolen  
10 confidential information from the PCAOB.

11 Q. Looking at the last line, who were you referring to as when  
12 you said, "I'll work through this with David before we pursue  
13 any actions"?

14 A. That's a reference to David Britt since he was one of the  
15 co-banking leaders in the audit practice in the national  
16 office.

17 Q. What had you and Tom Whittle discussed about sharing this  
18 with David Britt?

19 A. That because Cindy and I were identifying where we thought  
20 the PCAOB would likely inspect in 2017, that David was  
21 really -- David Britt was really the person that coordinated  
22 the national office's monitoring and other support for those  
23 banking engagements and so that he really needed to be kept in  
24 the loop on those things and so it was his call.

25 Q. Let's look at the attachment.

J2kdmid1

Sweet - direct

1 Can you read that?

2 A. Yes. I believe I can.

3 Q. What's in the first few columns?

4 A. The first few columns are the issuer's name, so the name of  
5 the KPMG audit that we had identified as having a high  
6 likelihood. Then we included a risk rating, kind of our  
7 prediction first being the most likely to be get picked. And  
8 "trading symbol" is just the ticker symbol, the stock trading  
9 symbol. "Opinion City" is the location that the audit's  
10 opinion is issued in. "Opinion State" is the state. "Fiscal  
11 year-end" would be just the year-end date for the audit.

12 Q. OK and let's scroll to the right. What is in the next  
13 couple of columns?

14 A. "AQSN" and "ALL monitoring program" are both references to  
15 two of the national office quality support initiatives that  
16 were being done that year. So "AQSN" stands for the audit  
17 quality support network. So some of the engagements had been  
18 assigned to this AQSN, which meant that a national office  
19 reviewer was going to support the Engagement Team. And then  
20 "ALL Monitoring Program" is similar but just focused only on  
21 the allowance, where there would be a national office person.  
22 So, an X in the box would indicate that the engagement was  
23 already subject to one of those programs.

24 Q. OK. Next column.

25 A. "Partner Risk" is where we believed or make an indication

J2kdmid1

Sweet - direct

1 that the lead audit engagement partner, or one of the other  
2 partners that was in a significant role in the engagement, had  
3 had past quality issues either through PCAOB comment forms in  
4 the past, an inspection, or internally.

5 And then "Reasons for Possible Selection" is just a  
6 summary of why we thought it was likely that that particular  
7 engagement would get picked.

8 Q. OK. And in the "Reasons for Possible Selection" column,  
9 did you utilize information from the 2015 GNF Planning Profile  
10 that you stole when you left the PCAOB?

11 A. Yes.

12 Q. Throughout your time at KPMG, did you maintain contacts  
13 with your former colleagues at the PCAOB?

14 A. Yes, I did.

15 Q. Who do you remember maintaining contact with?

16 A. There were quite a few people, but it certainly included  
17 Bob Ross, Jung Lee, Grady Peeler, David Nitz, Steve Schindler,  
18 and others.

19 Q. In what ways did you communicate with your former  
20 colleagues at the PCAOB?

21 A. Through emails, text exchanges, I guess occasionally  
22 through phone conversations, and then in-person meetings like,  
23 you know, grabbing dinner together or lunch together and maybe  
24 drinks.

25 Q. When you got back together with your former colleagues,

J2kdmid1

Sweet - direct

1 what kinds of things did you discuss with them?

2 A. Generally, they would ask how I was doing at the firm, how  
3 I liked KPMG. They would, you know -- a lot of them I had  
4 personal relationships with so we would talk about family and,  
5 you know, how they were doing. And then I would commonly ask  
6 them how they were doing and what sorts of things they were  
7 working on and how things were going at the PCAOB.

8 Q. Did you ever try to get confidential information from your  
9 former colleagues at the PCAOB?

10 A. Yes.

11 Q. What kind of information did you try to get from them?

12 A. I would sometimes ask, you know, probing questions such as,  
13 hey, you're traveling anywhere fun next year, you know,  
14 overseas? And if I knew they worked for -- on the KPMG  
15 Inspection Team and they said, yeah, I'm going to be going to  
16 this country, then that was a pretty big tip off to me that,  
17 well, they are likely going to be looking at a bank in that  
18 country, or, you know, how they were doing on their inspections  
19 with, you know, another firm, sometimes they would tell me.

20 Q. What did you do when you got that information?

21 A. Generally every time I would go back and tell others at  
22 KPMG.

23 Q. Who were the people you told at KPMG?

24 A. Tom Whittle, David Britt, certainly Cindy Holder, Dave  
25 Middendorf.



J2kdmidl

Sweet - direct

1 Q. Generally, how did they respond when you shared this  
2 information with them?

3 A. Very favorably, very positive to have that kind of  
4 additional insight.

5 Q. All right. Let's take a look at what's marked for  
6 identification as Government Exhibit 956R. We'll just look at  
7 a couple of examples.

8 Do you recognize this exhibit?

9 MS. KRAMER: If you could scroll through,  
10 Mr. Urbanczyk.

11 A. Yes, I do.

12 Q. How do you recognize it?

13 A. I recognize this to be an email exchange that I sent from  
14 my KPMG email account.

15 Q. On what date?

16 A. January 4th.

17 Q. What year?

18 A. Of 2016.

19 MS. KRAMER: The government offers Government Exhibit  
20 956R.

21 THE COURT: It says 956. Is that different from 956R?

22 MS. KRAMER: Yes. The top-left portion of the first  
23 page is redacted in 956R.

24 THE COURT: OK. 956R is received.

25 (Government's Exhibit 956R received in evidence)

J2kdmid1

Sweet - direct

1 BY MS. KRAMER:

2 Q. So who did you send this email to -- looking at the whole  
3 email chain, who did you send your first email to on January 4,  
4 2016 at 11:08 a.m.?

5 A. I sent it to Tom Whittle, Dave Middendorf and George  
6 Hermann.

7 Q. And what did you write in the first email in the chain?

8 A. I wrote: "Happy new year, gentlemen. I thought you might  
9 all appreciate knowing that Bob Ross has been assigned off of  
10 the KPMG team and will be inspecting" Deloitte & Touche, or  
11 "D&T this year. I'm not sure how immediate the change will  
12 take place. (He'll still be asked to follow through any  
13 unresolved prior year issues, reporting writing work, etc.)  
14 I'm supposed to have lunch with Steve later this week so will  
15 let you know if I hear anything else.

16 "All the best, Brian."

17 Q. Who was Bob Ross? What role did he play at the time?

18 A. Bob Ross was an associate director at the PCAOB who worked  
19 on KPMG inspections.

20 Q. And when you referred to "Steve," who were you referring  
21 to?

22 A. I was referring to Steve Schindler.

23 Q. What role did he play at the time?

24 A. Steve Schindler was also an associate director at PCAOB,  
25 and he was KPMG's overall team lead for the PCAOB's Inspection

J2kdmidl

Sweet - direct

1 Team.

2 Q. How did you know that Bob Ross was assigned off of KPMG?

3 A. He and I had had lunch and he told me.

4 Q. Was that fact public, as far as you knew?

5 A. No.

6 Q. Why did you share it with Dave Middendorf, Tom Whittle and  
7 George Hermann?

8 A. Because all three of them had been asking about whether or  
9 not Bob would continue, and it had been just a topic of a  
10 number of conversations because they were hoping that Bob would  
11 move off of KPMG's Inspection Team and on to one of the other  
12 firms.

13 Q. Let's look at Tom Whittle's response.

14 How did Tom Whittle respond?

15 A. Tom responded by saying: "There must really be a Santa.  
16 Is he still going to do DB in Germany?"

17 Q. What did you understand him to mean when he referred to  
18 "doing DB in Germany"?

19 A. "DB" is a reference to Deutsche Bank, which is KPMG's  
20 biggest banking audit client in Germany.

21 I'm sorry. So he's asking is he still going to, you  
22 know, lead the inspection of Deutsche Bank for the PCAOB in  
23 Germany.

24 Q. How did you respond?

25 A. I responded by saying: "I'm not sure. They could easily

J2kdmidl

Sweet - direct

1 make a case to keep Bob on Germany given how big that bank is  
2 and because DT-US doesn't have a big banking practice to keep  
3 him busy year-round. The full schedule and team assignments  
4 get finalized internally at the PCAOB in March so we'll know a  
5 lot more then."

6 Q. When you wrote "We'll know a lot more then" after the  
7 PCAOB's schedule and team assignments get finalized internally,  
8 how did you plan to learn about that?

9 A. I had expected that I will have another lunch with Bob and  
10 then he would no doubt tell me where he was going to be  
11 working.

12 Q. Did you plan to probe him on that subject?

13 A. Yes.

14 Q. And what did you plan to do when he shared that information  
15 with you?

16 A. To then go and tell Tom Whittle, Dave Middendorf, George  
17 Hermann, Cindy Holder, David Britt.

18 Q. And is Dave Middendorf on your January 4, 2016 email when  
19 you said, "The full schedule and team assignments get finalized  
20 internally at the PCAOB in March so we'll know a lot more  
21 then?"

22 A. Yes.

23 Q. Did Dave Middendorf ever tell you not to share confidential  
24 PCAOB information with him?

25 A. No.

J2kdmidl

Sweet - direct

1 Q. All right. Let's look at another example.

2 Did there come a time that you discussed with Bob Ross  
3 the size of the PCAOB's banking group?

4 A. Yes.

5 Q. Approximately when was that?

6 A. I don't -- I don't remember. I believe it may have also  
7 been in a subsequent conversation in January 2016, but I'm not  
8 certain of the time.

9 Q. Did you take notes of that conversation?

10 A. I didn't take notes while I was having lunch with Bob, but  
11 I remember going back, once I got back to the office after  
12 lunch, and taking notes of it.

13 Q. In sum and substance, what did he tell you?

14 A. That the PCAOB was planning to double the size of its  
15 banking inspection staff, meaning the number of inspectors that  
16 had banking experience for the KPMG team, and that they were  
17 going to double the number of banking associate directors for  
18 the KPMG Inspection Team as well.

19 Q. What did you do with that information, if anything?

20 A. I remember going back to the office and sharing that  
21 information with Tom Whittle, David Britt, Dave Middendorf.

22 Q. What did you understand the significance of that  
23 information to be for KPMG at the time that led you to share it  
24 with them?

25 A. The significance was that because Tom told me they were

J2kdmidl

Sweet - direct

1 going to double the size of the -- it was very significant  
2 information because it clearly indicated that the PCAOB's  
3 doubling the size of the inspection staff for KPMG that had  
4 banking experience meant that they could do more banking  
5 selections and also bigger banks.

6 Q. How did Dave Middendorf, David Britt and Tom Whittle react  
7 to this information?

8 A. Again, very, very favorably.

9 Q. In addition to these Bob Ross communications that you  
10 testified about, did you have other similar conversations in  
11 which you got similar information?

12 A. Yes.

13 Q. And what did you do in these circumstances typically?

14 A. Typically the same thing. I would go back and report it to  
15 Tom Whittle, David Britt and Dave Middendorf.

16 Q. And based on your conversations with them, did you have an  
17 understanding of whether they wanted you to continue to get  
18 this kind of information from the PCAOB?

19 A. Yes.

20 Q. What was your understanding?

21 A. That even going back to my first week, that that was  
22 something that was expected of me. They wanted me to maintain  
23 these relationships with my former colleagues at the PCAOB  
24 because that was very unique for me, because I had worked at  
25 the PCAOB and was now working in, you know, as a partner at

J2kdmidl

Sweet - direct

1 KPMG and other people didn't have those same kind of close  
2 personal relationships with PCAOB inspectors like that.

3 Q. All right. Let's turn to the events of January 9, 2017.

4 Please take a look at what's marked for identification  
5 as Government Exhibit 1072.

6 Do you recognize this exhibit?

7 A. Yes, I do.

8 Q. How do you recognize it?

9 A. I recognize this to be an email exchange between Cindy  
10 Holder and myself on our KPMG email account.

11 MS. KRAMER: The government offers Government Exhibit  
12 1072.

13 THE COURT: 1072 is received.

14 (Government's Exhibit 1072 received in evidence)

15 BY MS. KRAMER:

16 Q. All right. What date did you have this email exchange with  
17 Cindy Holder?

18 A. January 9, 2017.

19 Q. And who started the email exchange?

20 A. Cindy did.

21 Q. What did she write to you on January 9, 2017?

22 A. She wrote to me in the subject line: "Let me know when you  
23 get back from lunch," with two exclamation points.

24 Q. Was there anything in the body of her first email to you?

25 A. No, just her signature line.

J2kdmid1

Sweet - direct

1 Q. How did you respond?

2 A. I wrote by saying: "Walking back now. Going to grab a  
3 Starbucks. You want anything?"

4 Q. OK. And let's look on the first page.

5 What email did you send Cindy Holder when you were  
6 back in your office on January 9th?

7 A. I responded by saying: "Just got back. Swing by whenever  
8 you are free to catch up (and would you mind if I borrowed your  
9 Tide-stick?)"

10 Q. What happened after you sent her that email?

11 A. I remember her coming over to my office.

12 (Continued on next page)



J2K5mid2

Sweet - direct

1 BY MS. KRAMER:

2 Q. What happened when Cynthia Holder got to your office on  
3 January 9th, 2017?

4 A. She told me that she had just spoken with Jeffrey Wada and  
5 that Jeffrey Wada had given her information about PCAOB  
6 inspectors, as well as a preliminary listing of who the PCAOB  
7 was planning to inspect in 2017.

8 Q. Did she specifically use Jeffrey Wada's name in that  
9 conversation with you?

10 A. Yes.

11 Q. Let's go back for a moment to Government Exhibit 1072, in  
12 evidence. Do you recall what time of day you told her you had  
13 just gotten back?

14 Can we look at the whole page, Mr. Urbanczyk?

15 So, looking in the bottom half of the first page, her  
16 e-mail to you asking for a latte from Starbucks is Monday,  
17 January 9th at 12:31 p.m. Do you recall if you actually got  
18 back to your office from Starbucks looking at the top e-mail at  
19 5:45 p.m. or was it a different time of day?

20 A. No. That would be that same kind of Greenwich Mean Time so  
21 I got back as soon as I got back to the office after lunch,  
22 that's when I e-mailed her and said, okay, I'm back. Swing by.

23 Q. So, lunchtime is your recollection?

24 A. Yes. Just after I got back from lunch.

25 Q. Okay, so let's go back to the conversation that you had

J2K5mid2

Sweet - direct

1 with Cindy Holder in your office. What, if anything, did she  
2 tell you about how Wada had gotten that information, to the  
3 best of your memory?

4 A. She told me that Jeff had gone in and accessed, in the  
5 PCAOB's IIS system, the current version of what would have been  
6 the 2017 GNF planning profile where the planning work was being  
7 done and documented by the KPMG planning team, and had gone in  
8 and looked at which ones were being recommended for inspection,  
9 which ones had, like, the 1 ratings, which we looked at  
10 yesterday.

11 Q. What did you understand to be the significance of  
12 engagements having a 1 rating next to them in the GNF planning  
13 profile?

14 A. A 1 rating indicated that it was an audit engagement that  
15 the PCAOB was recommending for inspection and so it had a high  
16 likelihood or very strong correlation to where the final  
17 results would end up.

18 Q. Did Cindy Holder tell you who those selections were that  
19 Jeffrey Wada had shared with her from the IIS system at the  
20 PCAOB?

21 A. Yes, she did.

22 Q. And before we get into who the selections were, what, if  
23 anything, did Cynthia Holder tell you about what other topics  
24 she and Jeffrey Wada discussed in their call?

25 A. I remember her telling me that Jeff had -- Jeffrey Wada had

J2K5mid2

Sweet - direct

1 just found out that he was not going to get promoted that year  
2 to associate director, that there were -- that they were going  
3 to make three promotions from inspection leaders to associate  
4 director and that he was no. 4, so the first guy or first  
5 person left out. I remember her also sharing with me Jeff's  
6 ratings that he had received kind of internally and performance  
7 ratings, and then I remember she told me that Jeff had given  
8 her this full list of inspectors that the PCAOB was going to  
9 include in this brand-new group that it was identifying, that  
10 it was creating. It was referred to as this BIG which is the  
11 Banking Inspections Group.

12 Q. Do you know how long Jeffrey Wada had been trying to get  
13 promoted at the PCAOB at that point?

14 MR. COOK: Objection. Speculation. Foundation.

15 THE COURT: Sustained.

16 BY MS. KRAMER:

17 Q. Based on your experience at the PCAOB until April 2015 and  
18 based on your conversations with Cynthia Holder, do you know  
19 how long Jeffrey Wada had been trying to get promoted at the  
20 PCAOB?

21 MR. COOK: Objection.

22 THE COURT: Sustained.

23 BY MS. KRAMER:

24 Q. Let's take a look at what's marked for identification as  
25 Government Exhibit 202. Do you recognize this document?

J2K5mid2

Sweet - direct

1 A. Yes, I do.

2 Q. How do you recognize it?

3 A. I recognize this to be a PCAOB internal e-mail sent from  
4 Helen Munter, on the PCAOB e-mail exchange, to inspectors.

5 Q. And what is the date of this e-mail?

6 A. Tuesday, March 3rd, 2015.

7 Q. Were you an employee of the PCAOB at that time?

8 A. Yes, I was.

9 Q. Were you a recipient of e-mails that were addressed to  
10 "inspection staff - all?"

11 A. Yes, I was.

12 MS. KRAMER: The government offers Government Exhibit  
13 202.

14 THE COURT: 202 received.

15 (Government's Exhibit 202 received in evidence)

16 BY MS. KRAMER:

17 Q. What's the subject line of this e-mail from Helen Munter to  
18 inspection staff - all, on March 3rd, 2015?

19 A. It says promotion announcement - congratulations to all.

20 Q. And when you were at the PCAOB in March 2015, what was  
21 Jeffrey Wada's position?

22 A. He was an inspections leader.

23 Q. Could you look at Government Exhibit 202 at the list of  
24 individuals being congratulated on promotions and let us know  
25 if you see Jeffrey Wada's name on there?

J2K5mid2

Sweet - direct

1 A. His name is not on this list.

2 Q. Did you ever have any conversations with Cindy Holder about  
3 things Jeffrey Wada told her about his desire to be promoted at  
4 the PCAOB?

5 A. Yes.

6 Q. And what did she tell you about that?

7 A. I remember Cindy saying that Jeff had wanted to leave the  
8 PCAOB but that he wanted to wait until he had gotten promoted  
9 to associate director so that when he left he could ideally go  
10 into a partnership position at one of the firms. So, he was  
11 waiting to get promoted before he left.

12 Q. So, turning back to the conversation that you had with  
13 Cindy Holder on January 9th, 2017, when she told you that Jeff  
14 Wada told her that he was no. 4 in line for a promotion and  
15 they were only promoting three, did she tell you how he knew  
16 what he said about how he knew that he was the next in line?

17 A. Yes.

18 Q. What did she tell you about that?

19 A. That the associate director promotion decisions had been  
20 made already at that point and so his performance manager had  
21 let him know that he was not going to get promoted again that  
22 year in 2017, so he would stay as an inspections leader for  
23 another year.

24 Q. Did Cindy Holder show you any documents in your office on  
25 January 9th, 2017?

J2K5mid2

Sweet - direct

1 A. Yes.

2 Q. What did she show you?

3 A. She had her notebook with her and I remember she had taken  
4 notes from her conversation with Jeffrey Wada and had used a  
5 red pen. And so, I remember her showing me those notes  
6 including all the times of not only the pre-inspection list,  
7 the names of the issuers that the PCAOB had been recommended as  
8 a 1, but also the names of all the people in this Banking  
9 Inspections Group.

10 Q. How many pages of notes did she show you that day from her  
11 conversation with Jeffrey Wada?

12 A. I remember there being two pages of notes.

13 Q. What categories of information were on each of those two  
14 pages?

15 A. So, the first page included information about Jeff's lack  
16 of promotion that year and details about the promotion to AD,  
17 and then also information about the specific inspectors that  
18 PCAOB was putting into this Banking Inspections Group. And  
19 then the other category was the names of the specific issuers  
20 that had been identified as a 1 or a likely inspection target  
21 for 2017 for KPMG.

22 Q. What, if anything, did you do with the page of notes that  
23 had the identification of the PCAOB's inspection targets that  
24 Wada had shared with Holder after getting them from the IIS  
25 system?

J2K5mid2

Sweet - direct

1 A. I remember writing those names down and I may have taken a  
2 picture of that, that page of notes with my phone. I just  
3 can't remember.

4 Q. What did you copy the names of the inspections targets down  
5 onto?

6 A. I grabbed a, kind of a folder that was on my desk that was  
7 easily accessible and remember writing it down, to the best of  
8 my recollection, on that folder.

9 Q. Take a look at what's marked for identification as  
10 Government Exhibit 1444. Do you recognize this exhibit?

11 A. Yes.

12 Q. How do you recognize it?

13 A. I recognize this to be the photo that I took of the other  
14 page of notes that Cindy had written down from her conversation  
15 with Jeffrey Wada that day on January 9th.

16 Q. And when you say the other page of notes, what do you mean?

17 A. That the second page was the listing that included the kind  
18 of advanced notice of the likely inspection targets, that that  
19 was on the other page. This is the page that has details about  
20 Jeff's promotion and inspectors.

21 MS. KRAMER: The government offers 1444.

22 MR. COOK: May we be heard, your Honor?

23 THE COURT: Yes.

24 (Continued next page)

25

J2K5mid2

Sweet - direct

1 (At side bar)

2 MR. COOK: We have no objection to the exhibit. We  
3 object to it being redacted in the way that it has been as  
4 displayed on the screen. We think the entire exhibit should be  
5 in evidence. The redacted portion is Brady material, it is  
6 relevant, and there is no basis to have it removed.

7 THE COURT: What's redacted?

8 MS. KRAMER: What is redacted, your Honor, is Jeffrey  
9 Wada's medical information. He was having heart surgery after  
10 the -- sort of after this time period.

11 MR. COOK: During this time period, many of the  
12 conversations Mr. Wada had with Ms. Holder were about this  
13 serious heart condition that he had and not anything to do with  
14 inspection lists, confidential information. We intend to  
15 elicit that in our case, that much of the conversation had  
16 nothing to do with confidential information but related to his  
17 health condition. This is evidence of that.

18 THE COURT: How is it Brady?

19 MR. COOK: Because this is what they were talking  
20 about, they weren't talking about confidential information, and  
21 in particular when we get to the 2017 final list, that was the  
22 subject of their conversation, that he was having open heart  
23 surgery days after he supposedly gave the list. That's why  
24 they were talking for the length at which they communicated.

25 THE COURT: But why is that relevant?



J2K5mid2

Sweet - direct

1 MR. COOK: Because the government, I have no doubt, is  
2 going to elicit or introduce evidence of phone conversations  
3 between Mr. Wada and Ms. Holder that were very lengthy. We are  
4 going to introduce them if they don't. The subject matter of  
5 that conversation was this, not confidential information.

6 MR. WEDDLE: Your Honor, can I add?

7 I mean, I assume that Ms. Kramer is going to show a  
8 text message soon from Jeffrey Wada that says, in all caps, "we  
9 need to talk," from this day. I assume that the government is  
10 either going to argue or the jury is going to be permitted to  
11 infer that Jeffrey Wada -- on the top of Jeffrey Wada's mind on  
12 January 9th was the updating and disclosure of inspection  
13 lists. This document says right on it, he's going to have an  
14 angiogram through the wrist, he is meeting with his  
15 cardiologist on January 13th. That's critical information to  
16 put into context what was going on at that time in his life and  
17 how to properly interpret the text messages and the calls, both  
18 the frequency and the content of those messages.

19 MS. KRAMER: Okay. So, a couple of things, your  
20 Honor.

21 First, as relevant background, we had discussions with  
22 defense counsel before the motion *in limine* deadline in which  
23 we notified them that we thought the fact that Wada was having  
24 some kind of surgery, we did not intend to preclude. We  
25 thought that the fact that he was having open heart surgery was

J2K5mid2

Sweet - direct

1 designed to engender sympathy and not otherwise relevant. It  
2 could be major surgery but it doesn't need to be open heart  
3 surgery. Part of what the defense told us at the time was that  
4 if we intended to put in the evidence of how Jeffrey Wada  
5 didn't sort of refuse to comply with the internal  
6 investigation, that they wanted to rebut that with this heart  
7 surgery thing. In other words, that if we wanted to put in  
8 evidence that he sort of said I'm not going to participate in  
9 this interview anymore, we can do it, we can continue it later  
10 and then said never mind, it is too stressful, that they wanted  
11 to refute that with evidence that his heart problems impacted  
12 his finding that this was stressful. We then told them that we  
13 did not intend to put in that evidence. So, I thought that the  
14 particular issue of the fact that he had a heart problem was  
15 resolved by that. They certainly can ask or put in evidence.

16 We understand that one of the things that they intend  
17 to argue is that when Wada shared the grocery list, Cynthia  
18 Holder later explained that Wada's cover story was that these  
19 were about actual groceries because of his surgery. So, we  
20 understand they intend to argue that. So, there is some amount  
21 of the fact that he was having a surgery that we expect to come  
22 into evidence, but the specific details of the fact that he had  
23 heart surgery, it's (A) more prejudicial than probative because  
24 of the sympathy that it is designed to engender; and second, if  
25 offered by them, is hearsay in this document.

J2K5mid2

Sweet - direct

1 MR. COOK: It's precisely the seriousness of the  
2 health condition that makes it so relevant as to why they were  
3 talking, why Cindy was anxious to talk to him about it, for  
4 instance, this is something they discussed all the time.

5 THE COURT: But I don't know how it is relevant other  
6 than the length of the conversations and the exclamation point  
7 in a text, perhaps.

8 MS. KRAMER: One other thing I would add?

9 MR. WEDDLE: They were talking about it. It is  
10 written down in the document. They shouldn't be permitted to  
11 offer the document in a sanitized form. That's misleading the  
12 jury.

13 THE COURT: The government is offering the relevant  
14 parts to the charges.

15 MR. WEDDLE: Your Honor, they're sanitizing a piece of  
16 paper. It is a one-page document that comes from Brian Sweet's  
17 phone. It is a photograph that he took. It is a critical  
18 piece of evidence and it is misleading to try to sanitize it  
19 and take out of it some of the context --

20 THE COURT: To take out the irrelevant parts?

21 MR. WEDDLE: Your Honor, it's the --

22 THE COURT: Why is it relevant?

23 MR. WEDDLE: It is a major purpose for which they were  
24 speaking on that day.

25 THE COURT: And if they also committed fraud in the

J2K5mid2

Sweet - direct

1 conversation, why is it relevant what the other parts were?

2 MR. WEDDLE: Because it lends context to all of the  
3 other text messages, the purpose for which they were speaking.  
4 It lays out some of the chronology of what was happening on  
5 these critical days.

6 THE COURT: Can you put in the whole document?

7 MS. MERMELSTEIN: It is hearsay, your Honor. It is  
8 just hearsay.

9 MS. KRAMER: The fact that the -- go ahead.

10 MS. MERMELSTEIN: You go ahead.

11 The fact that he had surgery, we don't contest, can  
12 come in. But it has to come in in a proper evidentiary form.  
13 Mr. Sweet -- a photograph of what Cindy Holder wrote down to  
14 prove that that was true is hearsay. It can't come in in that  
15 form. There are certainly admissible ways it can come in.  
16 This isn't one of them.

17 MS. KRAMER: Also, your Honor, this is other evidence  
18 to -- this is classic evidence the defense intends to put in to  
19 say, look, they had a conversation about something  
20 non-criminal, therefore they didn't commit a crime and that's  
21 not permissible. That evidence is not admissible because the  
22 fact that someone does something that is noncriminal together  
23 doesn't in any way counter the fact that they also did  
24 something criminal. But, I also think that the sympathy that  
25 is trying to be engendered by focusing on the specifics of a

J2K5mid2

Sweet - direct

1 heart condition is improper.

2 MR. WEDDLE: Your Honor, there is nothing unfair and  
3 prejudicial about the facts of what we are going on. It lends  
4 credence to the interpretation of the events that they are very  
5 serious. We are not intending to argue anything about  
6 sympathy. It is what the document says and --

7 THE COURT: How is that part of it not hearsay?

8 MR. WEDDLE: Well, the first thing that I can think of  
9 off the top of my head, your Honor, I think there are probably  
10 other reasons why it is not hearsay, is what is described on  
11 this piece of paper is a statement of intent so it's an intent  
12 by Wada to attend a future appointment and he is describing his  
13 future appointments: I am going to the cardiologist on the  
14 13th. That's admissible under the state of mind exception to  
15 the hearsay rule as a statement of intent to show that the  
16 person who is going to carry through with that intent in the  
17 future. I can get your Honor a cite on that.

18 THE COURT: What do you say to that, that it is an  
19 exception to another exception to hearsay?

20 MS. MERMELSTEIN: I don't think that that is a fair  
21 characterization of the nature of the notes. I separately  
22 think that it's double hearsay. Even if it were true that  
23 Wada's own statement, *I am going to the cardiologist*, was a  
24 statement of future intent, these are now notes that are Cindy  
25 Holder's written record of what was said. It has a whole other

J2K5mid2

Sweet - direct

1 level of hearsay that can't be overcome even assuming the  
2 underlying statement fits into the first exception which I am  
3 not convinced it does.

4 THE COURT: I am going to overrule the objection. I  
5 find it is hearsay and on the basis of 403 I just don't think  
6 there is any relevance that's not substantially outweighed by  
7 unfair prejudice.

8 MS. MERMELSTEIN: Thank you.

J2K5mid2

Sweet - direct

1 (In open court)

2 MS. KRAMER: Your Honor, the government offers  
3 Government Exhibit 1444.

4 THE COURT: 1444 received.

5 (Government's Exhibit 1444 received in evidence)

6 BY MS. KRAMER:

7 Q. So, what are we looking at right now, Mr. Sweet, that is  
8 Government Exhibit 1444?

9 A. This is a photo that I took of Cindy Holder's notes from  
10 her conversation with Jeffrey Wada on January 9th.

11 Q. What's in the upper right-hand corner of this page?

12 A. This is a reference to what I mentioned earlier about that  
13 Jeff had found out that he was not going to get promoted to  
14 associate director.

15 Q. So, what is "taking 3, he's no. 4" a reference to?

16 A. It meant that the PCAOB was taking three people to  
17 associate director -- promoting three -- and that he was the  
18 fourth person.

19 Q. And what is the -- I'm not sure if we have all of it in the  
20 picture, where it says distinguished EE, EE and then a bracket  
21 "no promote."

22 What does that mean?

23 MR. COOK: Objection. Speculation.

24 Q. Based on your conversation with Cindy Holder, did you have  
25 an understanding of what that meant?

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Sweet - direct

1 A. Yes.

2 MR. COOK: Objection. Foundation.

3 THE COURT: Overruled. He can testify to what she  
4 told him.

5 THE WITNESS: Yes, I understood what that meant.

6 BY MS. KRAMER:

7 Q. Based on your conversation with Cindy Holder about what  
8 Jeffrey Wada told her that day, what was your understanding of  
9 what these notes meant?

10 A. That in June she told me that Jeff had said -- had told her  
11 that he had received a distinguished performance rating  
12 internally at the PCAOB and then two EEs for Exceeds  
13 Expectations, so very high marks at the PCAOB. But, no promote  
14 meant that despite those high performance ratings, he was still  
15 not getting promoted.

16 Q. And then, in the upper left-hand corner, did Cindy Holder  
17 discuss with you anything about Middendorf and Thomas Whittle  
18 and Bob Harcourt in relaying her conversation with Jeffrey  
19 Wada?

20 A. Yes.

21 Q. What did she say about that?

22 A. As I remember it, Bob Harcourt was a retired KPMG partner  
23 that had been working on PCAOB inspections at the PCAOB -- they  
24 had this retired partner program -- and that Bob Harcourt knew  
25 Tom Whittle and was going to refer Jeff or recommend Jeff to



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Sweet - direct

1 Tom Whittle and then to David Middendorf.

2 Q. Let's zoom out. Generally speaking, what is on the bottom  
3 half of the page, to your knowledge, based on your conversation  
4 with Cynthia Holder where she relayed what Jeffrey Wada had  
5 told her?

6 A. Yes.

7 She had taken down notes and Jeffrey Wada had given  
8 her all of the names of the PCAOB inspectors that were going to  
9 be assigned to this new Banking Inspections Group. So, at the  
10 top would be the PCAOB's associate directors and then there is  
11 names of specific PCAOB people, associate directors with  
12 banking experience, and then the rest of the names are the  
13 other PCAOB inspections staff, ILs referring to inspection  
14 leader and then in parentheses to some of the names were what  
15 she and Jeffrey Wada had talked about on specific people of who  
16 was good or a friend of Jeffrey Wada, who had a similar humor  
17 to Jeffrey Wada.

18 Q. Did you make any efforts to delete this photo of the notes  
19 that Holder took during her call with Jeffrey Wada on January  
20 9th, 2017?

21 A. Yes.

22 Q. When did you try to delete those?

23 A. In February of 2017 I became aware that KPMG was doing an  
24 internal investigation into this matter and were going through  
25 my notes, my e-mails, and my photos, and I deleted this. This

J2K5mid2

Sweet - direct

1 was one of the pictures I deleted.

2 Q. Why did you delete this picture of the notes that Cindy  
3 Holder took during her January 9th call with Jeffrey Wada?

4 A. Because this was clearly confidential information and the  
5 only way that anyone would -- that I would have known this  
6 information was because it had come directly from the PCAOB and  
7 so by having that on my phone, this photo on my phone was just  
8 a clear indication that I had been made aware of this  
9 confidential information.

10 Q. Approximately how many names of KPMG clients who the PCAOB  
11 was targeting for inspection did Cindy Holder tell you Jeffrey  
12 Wada shared on January 9th, 2017?

13 A. I don't remember the exact number but I believe it was  
14 around 10, 12.

15 Q. And you testified that you wrote them down on a manila  
16 folder. Why did you do that?

17 A. It is kind of the one of the ways I retained information is  
18 to write it down, visual like that. So, the manila folder was  
19 something that I had on my desk.

20 Q. Why did you want to retain this information?

21 A. Because the next step after learning it from Cindy was to  
22 go share it with Thomas Whittle, David Britt, and David  
23 Middendorf.

24 Q. Let's take a look at what's marked for identification as  
25 Government Exhibit 655. Do you recognize this exhibit?

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Sweet - direct

1 A. Yes, I do.

2 Q. How do you recognize it?

3 A. This is -- well, it is my handwriting, these are the notes  
4 that I took including the notes from that, that conversation  
5 with Cindy, the names that Jeffrey Wada provided on January  
6 9th, 2017.

7 MS. KRAMER: The government offers Government Exhibit  
8 655.

9 MS. LESTER: Objection.

10 THE COURT: Did you say no objection or objection?

11 MS. LESTER: Objection.

12 THE COURT: What's the objection?

13 MS. LESTER: Your Honor, I'm not sure what this is  
14 being offered for. The witness hasn't said he doesn't remember  
15 the names that he wrote down.

16 MR. WEDDLE: Your Honor, we also have an objection.  
17 Hearsay.

18 MS. KRAMER: Your Honor, the fact that it was made and  
19 the effect on the listener.

20 THE COURT: Objection is overruled. 655 is received.

21 (Government's Exhibit 655 received in evidence)

22 BY MS. KRAMER:

23 Q. So, first, what does the "RJF" in the middle of this folder  
24 stand for?

25 A. It's the name of one of KPMG's banking audit clients. It

J2K5mid2

Sweet - direct

1 stands for Raymond James Financial.

2 Q. Why did you write this information down on a Raymond James  
3 Financial folder?

4 A. In January of 2017 I was wrapping up some re-review work  
5 that I was doing with Cindy Holder on Raymond James Financial.

6 Q. What portion of Government Exhibit 655 that we are looking  
7 at on the screen contains the list of the PCAOB's inspection  
8 targets that Wada shared with Holder and that she relayed to  
9 you in your office on January 9th, 2017?

10 A. It is the information that's written in black on the  
11 right-hand side of this folder, so underneath the, sort of on  
12 the top right-hand side underneath the top 30 and then all the  
13 way to that black line that's written.

14 Q. Is that the section now that is zoomed in on between the  
15 words "top 30" and the line under "BONY," B-O-N-Y?

16 A. Yes.

17 Q. When do you recall writing down these notes?

18 A. To the best of my recollection, I wrote this down when  
19 Cindy was sharing with me the names that Jeff had given to her  
20 on January 9th.

21 Q. And, on January 9th, 2017, what's your understanding about  
22 whether any of these KPMG clients had been formally selected  
23 for inspection by the PCAOB?

24 A. I knew these to be, that this was totally confidential  
25 information, that none of these had been notified, and because

J2K5mid2

Sweet - direct

1 my understanding was that these were all still live audits so  
2 the audits were still in progress.

3 Q. So, these audits had not yet even been completed?

4 A. Yes.

5 Q. Which KPMG clients did Cindy Holder tell you Jeffrey Wada  
6 had shared with her on January 9th, 2017, looking at Government  
7 Exhibit 655?

8 A. So, starting from the top, Citigroup, Valero, Applied  
9 Materials, Chartered Communication, Macy's; and then down in  
10 kind of the next section with brackets, Lakeland, Midland  
11 States, National Bank Holdings, and Heartland.

12 Q. And what is your understanding of why your notes include  
13 Home Depot, Synchrony, and Northern Trust?

14 A. That those were, at that point, maybes by the PCAOB so  
15 issuers that they were considering. With Synchrony it is clear  
16 that it says on list of next in, and I remember discussing  
17 that, or down below not compelling compared to Citi but is only  
18 top 30. And so, it was kind of the next one in line for the  
19 big banks.

20 Q. Let's just look at the language that you were just  
21 referencing. So, in the brackets next Synchrony --  
22 Mr. Urbanczyk could you highlight the brackets that says on  
23 list of next in? No, go back. It gets too blurry when it is  
24 that big. Thank you.

25 A. So in the middle of this list with the arrow across --

J2K5mid2

Sweet - direct

1 Q. So, in the highlighting now next to Synchrony -- what does  
2 it say next to Synchrony before the brackets?

3 A. Financial. Synchrony Financial.

4 Q. So F-I-N-A-N is abbreviation for financial?

5 A. Yes.

6 Q. And what did you understand "on list of next int" to mean?

7 A. That it was on the PCAOB's planning list as being the next  
8 in line to get picked.

9 Q. Looking at the second entry in these notes under Citi, do  
10 you see where it says "Wells" and that's crossed out?

11 A. Yes.

12 Q. And then the word "not" appears?

13 A. Yes.

14 Q. What is your understanding of that?

15 A. That the PCAOB was not, or at least the planning inspection  
16 team at PCAOB had determined that Wells Fargo should not be  
17 inspected that year.

18 Q. Next to the names of the KPMG clients, do you see  
19 individual names in some cases and some other information?

20 A. Yes.

21 Q. Where did that information come from?

22 A. I remember, after Cindy had given or shared this  
23 information with me, that I had gone and pulled up the listing  
24 of which engagement partners worked on the particular audits  
25 and then also whether or not any of these had been subject to

J2K5mid2

Sweet - direct

1 this national office monitoring or a national office monitoring  
2 program, or were part of this Audit Quality Support Network  
3 that was in the national office and leaving notes or putting  
4 notes next to that.

5 Q. Why did you take those notes down of that additional  
6 information you looked up?

7 A. I remembered in March of 2016 when Jeffrey Wada had shared  
8 the first listing of the banks that were going to get picked by  
9 the PCAOB in 2016 that one of the things that David Britt had  
10 done before the, kind of the group call that I had with Thomas  
11 Whittle, David Middendorf, and David Britt, is that he had gone  
12 and looked up some information about these banking issuers and  
13 particularly which partners were on them and which ones were  
14 part of a support -- I'm sorry a monitoring program. And so, I  
15 was attempting to do the same before going and discussing this  
16 with David Britt and Thomas Whittle.

17 MS. KRAMER: Your Honor, I have just realized it is  
18 actually after 11:00. Is this a good breaking point for the  
19 mid-morning break?

20 THE COURT: Yes. Why don't we take 10 minutes, folks.  
21 Leave your pads on your chairs. We will continue in 10  
22 minutes.

23 (Continued on next page)

J2K5mid2

Sweet - direct

1 (Jury not present)

2 THE COURT: You may be seated.

3 You can step down.

4 (witness steps down)

5 MR. WEDDLE: Your Honor, may I be heard with some  
6 additional points regarding the documents we talked about when  
7 the witness leaves?

8 THE COURT: Yes.

9 MR. WEDDLE: Your Honor, I just wanted to make a  
10 record relating to the exhibit they were talking about which  
11 the witness has identified as handwritten notes of Cynthia  
12 Holder. I think it is Government Exhibit 1404?

13 MS. KRAMER: 1444.

14 THE COURT: 1444.

15 MR. WEDDLE: Thank you; which has been admitted in  
16 redacted form.

17 As I said at the side bar, it is my view -- the  
18 government said that the redacted portion, which relates to  
19 Jeffrey Wada's health conditions that were taking place right  
20 at that time of his doctor's appointments, are hearsay.  
21 They're not hearsay because of the state of mind exception to  
22 the hearsay rule. In addition, your Honor, they're admissible  
23 under Rule 106 which is the rule of completeness which requires  
24 the admission of additional portions of a statement when  
25 required to make the admitted portion not misleading. I think



J2K5mid2

Sweet - direct

1 that it does make the document misleading to sanitize it and  
2 redact from it some of the important information.

3 The prosecutor also offered or attempted to meet the  
4 objection of both defendant to the admission of Brian Sweet's  
5 handwritten notes by saying the fact that they were made. If  
6 that's a reason to admit Brian Sweet's handwritten notes then  
7 it is equally a reason to admit Cynthia Holder's handwritten  
8 notes and it overcomes the hearsay objection that was made at  
9 the side bar by the prosecution.

10 Also, your Honor, I think that there is a deeper  
11 hearsay problem with the redaction proposed by the government  
12 and that is Cynthia Holder is not a witness at this trial.

13 Your Honor has admitted certain statements of Cynthia  
14 Holder as subject to connection as co-conspirator statements  
15 made in furtherance of a conspiracy. We have written a  
16 submission on this, we maintain our objection, and we don't --  
17 we believe that at the end of the case the government will fail  
18 in its burden of proving by evidence beyond the statements  
19 themselves that there was any such conspiracy or that the  
20 statements were made in furtherance of a conspiracy such that  
21 they could be admitted against Mr. Wada.

22 If Cynthia Holder were a witness here, your Honor, she  
23 would testify regarding what she was told by Jeffrey Wada. To  
24 the extent she had a failure of recollection, the government  
25 might ask her to try to refresh her recollection with her

J2K5mid2

Sweet - direct

1 handwritten notes. If that didn't work and she laid the  
2 foundation for past recollection recorded, she might, under the  
3 rules, be permitted to read from her notes but the notes  
4 themselves would not be admitted in evidence. The same would  
5 be true of a law enforcement witness. This happens all the  
6 time. Law enforcement witnesses are in meetings with witnesses  
7 or targets, they take notes, they write reports, they testify  
8 about what was said.

9 THE COURT: But those aren't statements in furtherance  
10 of a conspiracy and therefore within the hearsay exception for  
11 that reason.

12 MR. WEDDLE: I agree, your Honor, and I'm going to get  
13 to that. But, my point is that if it is a live witness they  
14 don't simply admit their notes or their report of what was  
15 said, they testify about what was said and they can use the  
16 notes for certain purposes under the rules of evidence. To  
17 simply admit the notes, I believe, is an assertion by the  
18 government, adopted by your Honor, that the taking of the notes  
19 is a statement in furtherance of the conspiracy. It's not  
20 simply the conversation that is a statement in furtherance of  
21 the conspiracy, it is the taking of notes and Cynthia Holder  
22 took the notes for purposes of the conspiracy. The writing  
23 down is another hearsay act. That's why law enforcement agents  
24 don't simply admit their notes, they testify to their  
25 recollection. The writing down itself is a hearsay act, it is

J2K5mid2

Sweet - direct

1 an out-of-court statement that needs its own basis to be  
2 admitted.

3 So, what the government is doing by offering the notes  
4 is saying that the writing down is a statement in furtherance  
5 of the conspiracy and therefore the notes themselves are  
6 admissible.

7 Well, your Honor, there is no way to parse that basis  
8 for admission according to what is written down on the page.  
9 If Cynthia Holder is taking notes in order to further the  
10 conspiracy, then she's taking notes in order to further the  
11 conspiracy and everything that she writes down is in  
12 furtherance of that act, your Honor.

13 THE COURT: I don't know why that follows at all. I  
14 don't know why a conversation that includes things about a  
15 completely collateral, unrelated, personal topic would be in  
16 furtherance of the conspiracy as well, just because it is part  
17 of the same conversation. If you say get me a Starbucks coffee  
18 and then you go on to say things relating to the conspiracy,  
19 that doesn't make the Starbucks coffee comment part of the in  
20 furtherance of a conspiracy.

21 MR. WEDDLE: Your Honor, the writing, the writing has  
22 to be in furtherance of the conspiracy. She chose to write it  
23 down, she chose to show it to Brian Sweet, in furtherance of  
24 the conspiracy. That should not be sanitized in front of the  
25 jury and it should not be parsed according to what somebody's

J2K5mid2

Sweet - direct

1 after-the-fact view is about why she wrote it down. If she  
2 wrote it down in furtherance of the conspiracy then it should  
3 come in and if she didn't write it down in furtherance of the  
4 conspiracy but simply said things in furtherance of the  
5 conspiracy, then it shouldn't come in.

6 So, that's the record that I would like to make on  
7 that exhibit, your Honor, but I would also like to make another  
8 point which is I believe that it's not proper questioning to  
9 say based on your conversations with Cynthia Holder, what does  
10 this page of Cynthia Holder's notes mean or what is your  
11 understanding of what it means. His understanding of what it  
12 means is not relevant or helpful to the jury.

13 THE COURT: But he said based on his conversation  
14 about the notes with Cynthia Holder, another level of  
15 statements in furtherance of the conspiracy.

16 MR. WEDDLE: What he should be asked is what did she  
17 say about this and he should testify about what she said. He  
18 shouldn't be allowed to say based on unidentified and undefined  
19 conversations that I had with Cynthia Holder, this is what my  
20 understanding of her notes are where he is clearly just looking  
21 at the page and interpreting them for the jury which is  
22 prejudicial, barred by the hearsay rule, lacks a proper  
23 foundation, and is barred by the rule regarding lay opinion  
24 testimony, your Honor, because it is not helpful to the jury  
25 for him to simply interpret notes that are in evidence under

J2K5mid2

Sweet - direct

1 the guise of some amorphous body of undefined and unarticulated  
2 conversations that he had with Cynthia Holder.

3 THE COURT: Would you like to respond?

4 MS. KRAMER: Yes. Briefly, your Honor.

5 I think there is a more than ample foundation here for  
6 the witness' testimony about that. He gave testimony before  
7 the notes were even in front of him about what Cynthia Holder  
8 told him. He is a co-conspirator. It is certainly appropriate  
9 to ask him what he understood something to mean in a  
10 conversation he participated in.

11 Holder, as the evidence made clear said, *call me as*  
12 *soon as you are back*, many exclamation points, and took the  
13 notes to Brian Sweet's office to show him to talk to him about  
14 it. This is all in furtherance of the conspiracy. I think  
15 that the -- I don't know if your Honor needs to hear more on  
16 this.

17 THE COURT: I guess the one question I will ask you is  
18 if the taking of the notes was an act that was in furtherance  
19 of the conspiracy, why shouldn't the jury also see the notes?  
20 She had some reason to write down the unrelated medical-related  
21 issues and you have redacted them. It is a very small part of  
22 the document. She had some reason to write that down. If the  
23 whole thing was in furtherance of the conspiracy why shouldn't  
24 that come in as well, either for rule of completeness or for  
25 that all being arguably part of the conspiracy?

J2K5mid2

Sweet - direct

1 MS. KRAMER: So, I think the fact that Jeffrey Wada  
2 told her that he was having an angiogram on a certain date was  
3 not a statement that was made in furtherance of the conspiracy.  
4 It was like your Honor's Starbucks example and nothing about  
5 the rule of completeness calls for that to be put before the  
6 jury.

7 The only portion of a document that should be put  
8 before the jury in a context like this under the rule of  
9 completeness is where if, in fairness, it ought to be  
10 considered statement. So, if it actually gives context.  
11 Right?

12 So, if we had redacted something that was necessary to  
13 explain the admitted evidence, something about the substance  
14 here, not a completely unrelated collateral matter that has to  
15 do with the defendant's specific health. I remain totally  
16 befuddled by the argument that the fact that Jeffrey Wada had a  
17 heart problem is relevant in any way to the case. We have  
18 agreed with defense counsel that they can put before the jury  
19 the fact that he was having some kind of major surgery around  
20 the time of this because we understand it is a defense they  
21 want to raise that the grocery list code word was actually  
22 about groceries because of the fact that he was having this.  
23 The specific fact that it was a heart problem I still have not  
24 heard any proffer from Wada's defense counsel about why that is  
25 relevant and not purely designed to engender sympathy which is

J2K5mid2

Sweet - direct

1 in contradiction with a specific instruction your Honor will  
2 give the jury. It is irrelevant and collateral and that's why  
3 it has been redacted and should stay redacted.

4 MR. WEDDLE: Your Honor, I don't want to belabor the  
5 record but I do want our objection to be very clear in the  
6 record.

7 THE COURT: Okay.

8 MR. WEDDLE: Mr. Cook thinks that I may not have been  
9 clear enough in my position that either the entire document  
10 should be in evidence or the entire document should not be in  
11 evidence.

12 Our objection is to admit it in the way that it is  
13 admitted with redacted portions -- with portions redacted. So,  
14 either the entire document should not be in evidence or an  
15 unredacted document should be in evidence.

16 If I could, so that's making the record regarding my  
17 objection.

18 THE COURT: On that issue you have made your record  
19 clear. My ruling stands.

20 MR. WEDDLE: The events of January-February 2017 are  
21 critical to this case. They're not academically critical.  
22 Jeffrey Wada had heart surgery on February 7th and was in the  
23 ICU, I believe, for two days. He was going to doctors  
24 throughout this time period. I think that he had an  
25 appointment either on the 9th or 10th of January for this

J2K5mid2

Sweet - direct

1 angiogram to find out what was going on with his heart. He had  
2 a follow-up appointment with his cardiologist on the 13th. Not  
3 only are the days and the activities of people day-to-day in  
4 this time period critically important to the case, but the  
5 hours and the minutes are critically important to this case.

6 We are not seeking to elicit any of this for sympathy.  
7 Thank God Jeffrey Wada is fine. He was cured with the surgery  
8 but it is deeply prejudicial.

9 THE COURT: What is the relevance?

10 MR. WEDDLE: It is relevant because it talks about  
11 what he is doing on particular days. It's relevant because  
12 Cynthia Holder, he thought was a close friend of his and he  
13 talked to her regularly about his health conditions. Part of  
14 the reason for that is because Cynthia Holder had recently gone  
15 through a situation, I believe, with someone in her family  
16 related to a health condition. Part of the reason is that it  
17 is bound up with his decision-making about how interested he  
18 was in leaving the PCAOB for other employment. I anticipate  
19 that the government is going to present evidence that on  
20 January 10th or in the nighttime between January 9th and 10th,  
21 Jeffrey Wada sent his résumé to Cynthia Holder.

22 The government's theory is that he sent his résumé  
23 because that was the payoff for the confidential information  
24 that he talked about on the 9th. We are entitled to rebut  
25 that. We should not be handcuffed in rebutting this. The



J2K5mid2

Sweet - direct

1 facts of what happened are true. What is true is that he was  
2 fighting and facing a life-threatening heart condition. He was  
3 going to doctors' appointments. It entered into his thinking  
4 in terms of what his future plans were. It is a completely  
5 valid argument and a perfectly proper method of attacking the  
6 government's attempt to prove beyond a reasonable doubt that he  
7 was doing these things as part of a conspiracy that he was  
8 seeking employment solely as part of a conspiracy.

9 THE COURT: But that makes him more motivated to get a  
10 job at KPMG. I don't see how that is helpful. I just don't  
11 get the --

12 MR. WEDDLE: Your Honor, it is *res gestae*. It is what  
13 happened.

14 They should not be able to sanitize the facts of what  
15 took place in a critical five-week period of time when there is  
16 phone calls and text messages that they're going to interpret  
17 as being, expressing a sense of urgency because of the need for  
18 Jeffrey Wada to convey inspection lists in order to help a  
19 bunch of people at KPMG who are perfect strangers to him.

20 It is deeply prejudicial, your Honor, to keep that  
21 information out. We are not offering it for an improper  
22 purpose and there is no chance that the jury is going to be  
23 confused into thinking we are offering it for an improper  
24 purpose. When we say he is going to this doctor's appointment  
25 or this thing is recording the fact that he has an angiogram on

J2K5mid2

Sweet - direct

1 the 9th which involves a procedure through his wrist and a  
2 follow-up appointment with his cardiologist, an appointment on  
3 the 13th, it is to show what was going on between him and  
4 Cynthia Holder, she is not a witness in the case, and it is  
5 deeply unfair to Jeffrey Wada's defense to try to sanitize the  
6 facts and present a portion of them to the jury.

7 THE COURT: Did you want to add anything?

8 MS. KRAMER: I just want to make clear the government  
9 does not want to hamstring the defense which is why we have  
10 been abundantly clear that we won't object to evidence of some  
11 kind of medical procedure he is having. There still has not  
12 been a proffer about why the specific nature of his health  
13 condition is in any way relevant.

14 THE COURT: I still don't see why it is an exception  
15 to hearsay. I don't see how it comes in under 403 and I don't  
16 see why the government should be forced to include evidence  
17 that it doesn't think is part of the conspiracy.

18 Ms. Lester?

19 MS. LESTER: Your Honor, I wanted to address  
20 Government Exhibit 655, to which we and Mr. Wada's counsel  
21 objected, and the government asked that it be admitted for the  
22 fact that it was made and the effect on the listener which is  
23 an exception to the hearsay rule, which means that it  
24 wouldn't -- my understanding is that it means the government  
25 wouldn't be offering it for its truth. But then Ms. Kramer

J2K5mid2

Sweet - direct

1 proceeded to ask the witness questions about the names of the  
2 issuers listed on the document in a way that she was relying on  
3 the document as the truth.

4 So, we either think the Court should give a limiting  
5 instruction as to the purpose for which the document can be  
6 considered, or that testimony should be stricken.

7 MS. KRAMER: Your Honor, to be clear, Government  
8 Exhibit 655 is admissible also as a statement in furtherance of  
9 the conspiracy so it can be considered for its truth, as well  
10 as for the fact that it was made that the statements that are  
11 reflected in it were made, and for the effect on the listener.

12 THE COURT: But can it be, if it is a statement made  
13 in furtherance of the conspiracy it can be for the truth?

14 MS. KRAMER: Yes, your Honor.

15 THE COURT: I agree.

16 We will see you in about five minutes.

17 MS. KRAMER: Thank you, your Honor.

18 (recess)  
19  
20  
21  
22  
23  
24  
25

J2kdmid3

Sweet - direct

1 (Jury present)

2 THE COURT: You can be seated.

3 All right. We will go until about 1 o'clock and then  
4 we will break for an hour lunch.

5 Ms. Kramer, you may proceed.

6 MS. KRAMER: Thank you, your Honor.

7 May I proceed?

8 THE COURT: Yes.

9 MS. KRAMER: Thank you, your Honor.

10 BY MS. KRAMER:

11 Q. All right. Taking a look at what's in evidence as  
12 Government Exhibit 655, and let's focus on the upper right-hand  
13 portion.

14 What, if anything, did Cindy Holder share with you on  
15 January 9, 2017, about Macy\*s from her conversation with Jeff  
16 Wada?

17 A. For Macy\*s, she also shared with me that Jeff had -- Jeff  
18 Wada had provided to her some of the specific rationale for why  
19 the PCAOB was considering picking Macy\*s.

20 Q. Do your notes reflect the rationale for Macy\*s?

21 A. No.

22 Q. Do you remember any about what Cindy Holder told you about  
23 the rationale for the PCAOB selection of Macy\*s based on her  
24 conversation that day with Jeff Wada?

25 A. Yes.

J2kdmid3

Sweet - direct

1 Q. What do you recall?

2 A. That part of the reason why Macy\*s was being considered by  
3 the PCAOB for inspection was because it had announced --  
4 recently announced that it was going to close 5,000 of its  
5 stores and that resulted in audit risk about its ability to  
6 continue as a company. And then also because Dave Middendorf  
7 was the engagement quality review partner, in that concurring  
8 review partner role on Macy\*s and because of his specific  
9 leadership position, that that was one of the factors as well.

10 Q. What does it mean to be the concurring review partner or  
11 the engagement quality review partner, as you described it?

12 A. That's a role that's required. It is a second partner that  
13 will review the work and sign off on the audit before the  
14 opinion can be issued by the firm, kind of a second, like,  
15 quality check that's in place.

16 Q. After Cindy Holder shared the list with you that she said  
17 she had gotten from Jeff Wada on January 9, 2017, what did you  
18 do next?

19 A. I then went with Cindy and we went into Tom Whittle's  
20 office to share this information with Tom Whittle.

21 Q. What happened in the meeting with Tom Whittle?

22 A. We -- I remember Cindy and I sitting at Tom Whittle's desk.  
23 Cindy had brought her notes. And we both told Tom Whittle that  
24 I received a call from a former colleague at the PCAOB and that  
25 he had provided advance notice on who was likely to get picked

J2kdmid3

Sweet - direct

1 by the PCAOB for its inspections of KPMG in 2017.

2 Q. Did you and Cindy Holder provide Tom Whittle with the names  
3 of the KPMG audit clients that Jeff Wada had given to Cindy  
4 Holder that day?

5 A. Yes.

6 Q. And what, if anything, was discussed in the meeting with  
7 Tom Whittle about the rationale for the Macy\*s pick?

8 A. I remember we discussed that specifically with Tom. We  
9 shared with him that information that Jeff Wada had provided to  
10 Cindy.

11 Q. How did the meeting with Tom Whittle end on January 9,  
12 2017?

13 A. I told Tom that I was going to go speak with David Britt  
14 because I wanted to give David Britt a heads, up and Tom  
15 indicated that he would speak with Dave Middendorf and share  
16 the information with him.

17 Q. What happened next?

18 A. I remember also discussing with Tom that since CitiGroup  
19 was on the list, that because it was likely to get picked then  
20 by the PCAOB and was such a large audit engagement, that I had  
21 been supporting it in its audit quality support network role  
22 and that I wouldn't be able to get through all of the work --  
23 be able to review all of the work, and so Cindy asked Tom  
24 whether or not he would permit her to also work on CitiGroup as  
25 they were going through and trying to finalize their audit

J2kdmid3

Sweet - direct

1 work.

2 Q. OK. How did he respond?

3 A. He responded by telling Cindy she could, that she would be  
4 happy for Cindy -- that he would be happy for Cindy to help out  
5 with the CitiGroup audit, and also that I should reach out to  
6 Mike Tucker, who was another former PCAOB employee that KPMG  
7 had hired into the national office, and so that we could all  
8 work on CitiGroup together.

9 Q. What happened next?

10 A. I remember leaving Tom's office with Cindy going back into  
11 my office, which is when I took the picture of the notes, you  
12 know, Cindy's red notebook, the red pen, on my phone.

13 Q. Where did you go next?

14 A. I went to David Britt's office.

15 Q. Was he available when you went to his office?

16 A. No. I remember David Britt had the door shut and he was on  
17 the phone, and so I remember looking in the glass window. He  
18 kind of waved at me and gave me like the five-minute sign that  
19 he would come grab me when he was done.

20 Q. Who was the next person that you spoke with?

21 A. Jen Lauer.

22 Q. What was her role at the time?

23 A. I can't remember her title but I think she was a managing  
24 director. But she reported directly to David Britt in the  
25 Banking Audit Group within the national office.

J2kdmid3

Sweet - direct

1 Q. And what, if anything, did you tell her?

2 A. She came by my office and said, "Hey, David said you want  
3 to speak." And I said, "Yep. We got a heads up of who the  
4 PCAOB may be inspecting for 2017." And I shared with her the  
5 list that Cindy had provided.

6 Q. Why did you feel comfortable telling Jen Lauer this  
7 information?

8 A. Jen had been part of the rereview, the stealth rereview  
9 team, from March of 2016, and I believed that she had been  
10 brought into the circle of trust, that she had been aware of  
11 the real reason why we had done the reviews in 2016.

12 Q. Did there come a time that day when you spoke with David  
13 Britt?

14 A. Yes.

15 Q. Approximately when was that?

16 A. Later on that evening. I don't remember the exact time but  
17 it was in the evening.

18 Q. Where did you speak with David Britt?

19 A. In my office.

20 Q. When he showed up, were you alone or was anyone else there?

21 A. Tom Whittle was in my office.

22 Q. Had Tom showed up in your office unannounced, or had you  
23 made a plan to meet?

24 A. He had shown up unannounced.

25 Q. Let's talk about your meeting with Tom Whittle before David



J2kdmid3

Sweet - direct

1 Britt arrived.

2 What did Dom Whittle tell you in your office that  
3 evening on January 9th?

4 A. He told me that he had spoken with Dave Middendorf and had  
5 shared the information that Jeff Wada provided with Cindy that  
6 we had just shared with Tom earlier that day and specifically  
7 the names of who the PCAOB was likely to inspect, and had --  
8 that they had worked out kind of an action plan as to who to  
9 notify and what to do in response to this knowledge of some of  
10 at least the biggest issuers that were on that list.

11 Q. What, if anything, did you understand their action plan to  
12 be with respect to the Macy\*s audit based on what Tom Whittle  
13 told you?

14 A. Tom indicated that they had decided to have Joe Lynch, who  
15 was another PCAOB colleague that KPMG had hired into the  
16 national office, and that Dave Middendorf had indicated that  
17 Joe had already been out to Macy\*s and had given I think a  
18 presentation to the Engagement Team, and that Dave was going to  
19 have Joe Lynch come back out to help out the Audit Engagement  
20 Team as they finalized their year-end audit.

21 Q. What was the status of the Macy\*s audit as of May 9th --  
22 sorry. Withdrawn.

23 What was the status of the Macy\*s office as a --  
24 withdrawn.

25 What was the status of the Macy\*s audit as of

J2kdmid3

Sweet - direct

1 January 9, 2017?

2 A. It was still a live audit, so the audit was still in  
3 progress.

4 Q. And what does that mean about whether new procedures  
5 performed have to be specially documented?

6 A. Because the audit was still in progress, any new procedures  
7 could be added without any special documentation.

8 Q. Did Tom Whittle tell you anything else before David Britt  
9 showed up in your office the evening of January 9th?

10 A. Yes.

11 Q. What else do you remember him saying?

12 A. We also talked through some of the other large KPMG clients  
13 that were on that listing and what the plan was going to be,  
14 who specifically was going to get involved from the national  
15 office to support those other audits as well.

16 Q. And when you refer to "that listing," are you referring to  
17 the list that Cindy Holder gave you that she said she had  
18 gotten from Jeff Wada?

19 A. Yes.

20 Q. Do you remember specifically discussing any particular KPMG  
21 engagement on that list that Wada shared?

22 A. Yes.

23 Q. Which ones do you recall discussing?

24 A. I remember we also discussed Valero and that Tom was going  
25 to ask Scott Henderson, who was another PCAOB employee that

J2kdmid3

Sweet - direct

1 KPMG had hired into a partner role, and I remember him saying  
2 that Scott Henderson owed him one so he was going to have Scott  
3 Henderson help out with the Valero Engagement Team, and also  
4 that Hector Santana was going to be asked to help out with the  
5 Charter Communications -- the Charter Communications audit.

6 Hector was another partner that KPMG had hired from the PCAOB  
7 and was based -- was commuting back and forth from the same  
8 geographical area. And then lastly that Tom was also going to  
9 speak with Craig Black, who was -- had worked that summer for  
10 Tom Whittle in the National Office Inspections Group and was  
11 the -- I believe he was the EQCR on applied materials.

12 Q. Were you given any specific directions by Tom Whittle  
13 before David Britt showed up?

14 A. Because I was serving as the AQSN for CitiGroup, we had  
15 talked about me speaking with the lead audit partner of  
16 CitiGroup and letting him know of the likely PCAOB inspection.  
17 And I believe we again discussed having Cindy and Mike Tucker  
18 support the -- from the national office perspective the audit  
19 of CitiGroup.

20 Q. What does it mean to be the AQSN on Citi?

21 A. It was a specialist role that the national office had  
22 created. One of the other kind of quality initiatives that  
23 they were putting together was this audit quality support  
24 network, so specialist partners with really a good auditing  
25 skill set to get involved on certain engagements to, similar to

J2kdmid3

Sweet - direct

1 the monitoring programs, help ensure that the audit work that  
2 they were doing was high quality work.

3 Q. OK. And what did that have to do with you being asked to  
4 speak with the engagement partner on Citi?

5 A. So, because I had been assigned as this audit AQSN audit  
6 network partner on CitiGroup, that I was already very engaged  
7 at that point in the year with Citi's audit. I had been  
8 working with them for quite awhile. So I had been working very  
9 close with Citigroup's lead audit partner, and so it just made  
10 sense for me then to give him a heads up of the likelihood of  
11 PCAOB inspections.

12 Q. Who was Citi's lead audit partner at that time?

13 A. Paul Tupper.

14 Q. And did you have an understanding, based on what Tom  
15 Whittle told you in this conversation in your office on  
16 January 9th, about whether these directives were Tom Whittle's  
17 alone?

18 A. No. My understanding was that this is what he and Dave  
19 Middendorf had discussed following mine and Cindy's meeting  
20 with Tom Whittle.

21 Q. All right. After David Britt came to your office and  
22 joined the conversation, what was discussed?

23 A. We talked through each of the names of the KPMG audit  
24 clients that, again, Cindy had received from Jeff Wada,  
25 including the action plan that had been decided for these big

J2kdmid3

Sweet - direct

1 clients. We also talked about the banks that were on the  
2 listing, since David was very involved in those bank audits in  
3 his role as the co-banking leader.

4 Q. What, if anything, did you say in that meeting about the  
5 status of the PCAOB's selections for inspection as of  
6 January 9, 2017?

7 A. I remember telling them both that from my experience this  
8 was -- the beginning of January was still fairly early in the  
9 PCAOB's planning cycle and that from my experience that the  
10 names of the specific inspections weren't finalized by the  
11 PCAOB until February, and so I wanted them to be aware that  
12 there could be changes made to these names. And so if they  
13 didn't end up ultimately getting picked by the PCAOB, that  
14 there was a chance that that could happen.

15 Q. What, if anything, did Tom Whittle say in response?

16 A. I remember Tom saying, after I said that, that, "Well,  
17 Brian, we're going to get the list again, right?"

18 Q. What did you understand him to be asking when he said,  
19 "brian, we're going to get the list again, right?"

20 A. That he was confirming with me the expectation that we were  
21 going to get the final listing of inspections once it had been  
22 concluded by the PCAOB in the same way that we had in March of  
23 2016.

24 Q. And did Tom Whittle ask you that in front of David Britt?

25 A. Yes.

J2kdmid3

Sweet - direct

1 Q. How did you respond?

2 A. I remember shrugging my shoulders and saying, "I guess so."

3 Q. Aside from notifying Paul Tupper about Citi and doing some  
4 extra work on Citi, what, if anything, were you asked to do on  
5 January 9th?

6 A. Tom Whittle also asked me to update the previous bank  
7 predictions list that I had created with Citi -- excuse me,  
8 with Cindy Holder and to add the four additional names that  
9 Jeffrey Wada had provided on this listing into that bank  
10 screening analysis.

11 Q. Was David Britt present when Tom Whittle gave you that  
12 direction?

13 A. Yes.

14 Q. Did you have an understanding of why you were being asked  
15 to add those four names that had come from Jeff Wada that day  
16 to the prediction list you had previously put together?

17 A. So that it would really camouflage any actions that the  
18 national office decided to take in response to knowing these  
19 four names from Jeff Wada and have kind of a plausible reason  
20 for why, make it seem like it had just been based on our own  
21 prediction and not really that it had come from Jeff Wada.

22 Q. How did that meeting end?

23 A. I remember Tom Whittle also saying to both David Britt and  
24 I that we had to keep this information totally confidential,  
25 that we could not tell anyone that we had received this

J2kdmid3

Sweet - direct

1 information, again, from this former colleague at the PCAOB.

2 Q. After your meeting with Whittle and Britt on January 9th in  
3 which you were asked if you were going to get the list again,  
4 did you have any conversations with anyone about that?

5 A. Yes.

6 Q. Who?

7 A. I remember telling Cindy Holder that and debriefing her on  
8 my conversation with Tom Whittle and David Britt that night.

9 Q. Why did you tell Cindy Holder about that conversation?

10 A. Because it was clear that Tom's expectation was that we  
11 would get the 2017 list again, and Cindy had been receiving  
12 that, this advance issue or notice, from Jeff Wada, because she  
13 was the go-between, Jeff Wada that wanted her to know what Tom  
14 had said.

15 Q. What was your expectation, if any, about what Holder would  
16 do when you told her that that's what Tom had said?

17 A. That she would use that direction and then go and get the  
18 final list of issuers from Jeff once the list had been  
19 finalized.

20 Q. All right. Let's take a look at what's marked for  
21 identification as Government Exhibit 1073.

22 Do you recognize this exhibit?

23 A. Yes, I do.

24 Q. How do you recognize this exhibit?

25 A. I recognize this to be an email that Cindy had forwarded to

J2kdmid3

Sweet - direct

1 me on January 10, 2017.

2 MS. KRAMER: The government -- sorry.

3 A. I was just going to say on my KPMG email account.

4 MS. KRAMER: OK. The government offers Government  
5 Exhibit 1073.

6 THE COURT: 1073 is received.

7 (Government's Exhibit 1073 received in evidence)

8 BY MS. KRAMER:

9 Q. All right. Let's look at this first email in this chain.

10 OK. So it starts at the bottom of page 1 of  
11 Government Exhibit 1073 and continues onto the next page.

12 Who is this email from?

13 A. This email is from Jeff Wada.

14 Q. At what email address?

15 A. Jeff.Wada@gmail.com.

16 Q. To whom is it addressed?

17 A. To Cindy Holder.

18 Q. At what email address?

19 A. Cindy's personal email, cholder21@aol.com.

20 Q. What is the subject line of the email?

21 A. "Résumé attached."

22 Q. And what time and date is on this email?

23 A. It is dated January 10, 2017, at 12:55 a.m.

24 Q. So essentially the night of January 9th, 2017?

25 A. Yes.



J2kdmid3

Sweet - direct

1 Q. All right. Let's look at the body of the email.

2 Could you read the first paragraph.

3 A. "Cindy, good evening. You are still the only person I know  
4 who still uses AOL LOL. Please see the attached résumé. I  
5 have provided you both a Word version and a pdf version for  
6 your reference. The formatting may be a bit tricky so if you  
7 have any changes you want me to process, please let me know and  
8 I will be happy to update it for you."

9 Q. All right. And let's look at the third paragraph.

10 Starting in the third line of the third paragraph,  
11 could you read the sentence that begins with "I don't toot my  
12 own horn?"

13 A. "I don't toot my own horn about this at the PCAOB because  
14 it doesn't prove anything here other than that you are a petty,  
15 insecure, small human being; however, seeing as I am now trying  
16 to sell myself to KPMG, I was thinking that I would like to  
17 make sure that I stress these aspects of my work history  
18 because I think it sets me apart from others - what do you  
19 think?

20 Q. All right. And let's look at the fourth line from the  
21 bottom. Could you read the sentences beginning with "It's  
22 funny how?"

23 A. "It's funny how I was on the fast track to partner and  
24 clearly recognized for my talents at Deloitte and then I ended  
25 up at this effin place with all the BS politicking that I loath

J2kdmid3

Sweet - direct

1 and now I can't get a GD promotion to save my life just because  
2 I refuse to kiss people's asses and spread the political  
3 rhetoric. God, this place sucks."

4 Q. All right. Let's look at the P.S.

5 So, actually, how is the email -- how is the email  
6 signed off on, the last line, and then the signature block?

7 A. It says, "Please let me know what else you need from me.  
8 Thank you, Jeff."

9 Q. And let's look at the P.S.

10 Could you read the first three sentences?

11 A. "P.S. By the way, will you be asking around the firm to  
12 find out the partners' views of those I had inspected? If so,  
13 is there a way you can also get the thoughts of the partners at  
14 KPMG AZSA? I can give you a list of names of the partners I  
15 inspected over there in Tokyo. One of the senior partners on  
16 the Honda Engagement Team really liked my style and respected  
17 my approach."

18 Q. What's your understanding about what role Jeff Wada played  
19 in a KPMG Tokyo inspection?

20 A. I knew that KPMG was the overall team lead for a KPMG Japan  
21 inspection that occurred that prior December, January and  
22 February of 2016.

23 Q. Who was the overall team lead for that KPMG Japan  
24 inspection?

25 A. It was Jeff Wada.

J2kdmid3

Sweet - direct

1 Q. And that was when he was employed where?

2 A. At the PCAOB.

3 Q. All right. Let's take a look at the résumé that was  
4 attached to this email.

5 Whose résumé is this?

6 A. This is Jeff Wada's résumé.

7 Q. And what's the phone number at the top of the résumé?

8 A. (714) 206-2356.

9 Q. What is the email arrest on his résumé?

10 A. Jeff.wada@gmail.com.

11 Q. Was this résumé and email forwarded to you?

12 A. Yes.

13 Q. All right. Let's look at those emails.

14 So in the bottom half of the first page of Government  
15 Exhibit 1073, do you see header information above the subject  
16 line "FWD: Résumé attached?"

17 A. Yes.

18 Q. And who is that being sent from and to?

19 A. Cindy Holder is sending this from her personal AOL account  
20 to her KPMG work email account.

21 Q. And let's look at the email above that one.

22 Who is this email being sent from and to?

23 A. Cindy then sent it from her KPMG email account to me at my  
24 KPMG work email account.

25 Q. Is there anything in the body of the email from Cindy

J2kdmid3

Sweet - direct

1 Holder to you?

2 A. No.

3 Q. Did you have an understanding when you received this of why  
4 it was being sent to you?

5 A. Yes.

6 Q. What was your understanding?

7 A. That Jeff wanted to apply for a job at KPMG and before he  
8 did that he wanted both Cindy and I to review his résumé to see  
9 if there is anything that he needed to change that could help  
10 strengthen his résumé.

11 Q. Did you look over Jeff Wada's résumé?

12 A. Yes.

13 Q. Did you provide comments?

14 A. Yes.

15 Q. Why?

16 A. It was something that I had done for other people on  
17 résumés, but ultimately it was because Jeff had -- that was the  
18 reason that Jeff was sending his résumé was so that we could  
19 provide feedback, and by me giving him feedback on his résumé  
20 would continue to encourage the behavior.

21 Q. What behavior did you want to encourage?

22 A. The sharing of confidential stolen PCAOB information.

23 Q. Let's take a look at what's marked for identification as  
24 Government Exhibit 1079.

25 Do you recognize this document?

J2kdmid3

Sweet - direct

1 A. Yes.

2 Q. How do you recognize it?

3 A. This is an email that I sent to Cindy on my KPMG email  
4 account.

5 Q. On what date?

6 A. On Monday, January 30, 2017.

7 MS. KRAMER: The government offers Government Exhibit  
8 1079.

9 THE COURT: Received.

10 (Government's Exhibit 1079 received in evidence)

11 BY MS. KRAMER:

12 Q. All right. Let's look at the email from you to Cindy  
13 Holder at the bottom of the first page of Government Exhibit  
14 1079, in evidence.

15 First, what is the subject line of this email?

16 A. It is "Résumé - J Wada."

17 Q. What are the first two lines that you wrote to Cindy in  
18 this email?

19 A. I wrote: "Cindy - Jeff's résumé looks extremely strong to  
20 me. What a solid background and I can't wait to get him on  
21 board. I've attached" --

22 Q. Sorry. Why did you write that?

23 A. Because I knew that Cindy would take my feedback on his  
24 résumé and whatever I wrote and forward that directly to Jeff  
25 Wada.

J2kdmid3

Sweet - direct

1 Q. Did you actually feel positive about the prospect of Jeff  
2 Wada leaving the PCAOB and joining KPMG?

3 A. No, I did not.

4 Q. Why did you lie about your feelings in the email?

5 A. Again, to encourage -- to send positive reinforcement and  
6 really encourage Jeff to continue doing and sharing what he had  
7 been sharing.

8 Q. Why did you want him to continue sharing confidential PCAOB  
9 information?

10 A. Because it was clearly an expectation that we would  
11 continue to get this, that Cindy and I would continue to get  
12 this information, but I also knew that it made me look good by  
13 sharing this information. It was advancing my career.

14 Q. Who did you understand it to be an expectation of that you  
15 would continue to get this confidential information?

16 A. Tom Whittle and Dave Middendorf.

17 Q. All right. Let's turn back -- actually, let's look at the  
18 top of Government Exhibit 1079.

19 Do you see the forwarding information at the top of  
20 this page?

21 A. Yes.

22 Q. Who was the email that you sent forwarded to and who was it  
23 forwarded from?

24 A. Cindy Holder is forwarding it to her -- back to her  
25 personal email account, the AOL email account, from her KPMG

J2kdmid3

Sweet - direct

1 work email.

2 Q. All right. Let's turn back to that banking prediction list  
3 that you testified Tom Whittle asked you to update.

4 Did you follow Tom Whittle's instructions on  
5 January 9th to add those additional four banks to your prior  
6 prediction list?

7 A. Yes.

8 Q. Let's look at what's marked for identification as  
9 Government Exhibit 1076.

10 Do you recognize this exhibit?

11 A. Yes.

12 Q. How do you recognize it?

13 A. This is the email that I sent via my KPMG email account.

14 Q. On what date?

15 A. January 13, 2017.

16 MS. KRAMER: The government offers Government Exhibit  
17 1076.

18 THE COURT: Received.

19 (Government's Exhibit 1076 received in evidence)

20 BY MS. KRAMER:

21 Q. All right. So let's look at the header information.

22 Who did you send this to?

23 A. I sent this to both Tom Whittle and to David Britt.

24 Q. And what did you write in the body of this email?

25 A. I wrote: "Tom/David - attached is the bank screening/risk

J2kdmid3

Sweet - direct

1 assessment analysis that Cindy and I pulled together. Please  
2 let me know if you have any questions. Thanks, Brian."

3 Q. And what was the date you sent this?

4 A. On January 13th.

5 Q. How many days after January 9th was that?

6 A. Four days.

7 Q. What was attached to your email on January 13th to Tom  
8 Whittle and David Britt?

9 A. It's the Excel file of -- called "Bank Screening Analysis."

10 Q. All right. Let's look side-by-side at the one that you had  
11 sent November 2016, Government Exhibit 1067, and this one from  
12 January 13, 2017, Government Exhibit 1076.

13 OK. So the new one from January 13th is on the left  
14 as Government Exhibit 1076, is that right?

15 A. Yes.

16 Q. And the older one is on the right as Government Exhibit  
17 1067.

18 So let's look side-by-side at the first column,  
19 Mr. Urbanczyk. Could you put up the first two columns on the  
20 right, please. Thank you

21 So the font is tiny but can you read this?

22 A. Yes, I can.

23 Q. What changes did you make to the Bank Screening Analysis  
24 from January 13, 2017 that's on the left as Government Exhibit  
25 1076?



J2kdmid3

Sweet - direct

1 A. I added the names of the four banks that Jeffrey -- that  
2 Jeff Wada provided to Cindy on January 9th that it shared with  
3 Tom and David Britt, and then I also moved CitiGroup up to the  
4 very top.

5 Q. All right. So looking at the popped-out box on the left  
6 side from Government Exhibits 1076, which are the names that  
7 you added?

8 A. So the names that I added are Heartland Financial, which is  
9 number 5 on the left side; Midland States Bancorp, which is  
10 number 9 on the left side; National Bank Holdings, which is  
11 number 12 on the left side; and then Lakeland Bancorp, which is  
12 number 14 on the left side.

13 Q. And what change did you make to CitiGroup?

14 A. CitiGroup we had previously ranked as number 5 on the right  
15 side in our original bank screening analysis, and because we  
16 knew now, based on the information Jeff Wada shared on  
17 January 9th, we moved it to number 1 in the ranking.

18 Q. Let's look at what's marked for identification as  
19 Government Exhibit 1077.

20 Do you recognize this exhibit?

21 A. Yes.

22 Q. How do you recognize it?

23 A. I recognize this to be an email I received on my KPMG email  
24 account.

25 Q. On what date?

J2kdmid3

Sweet - direct

1 A. January 17, 2017.

2 MS. KRAMER: The government offers Government Exhibit  
3 1077.

4 THE COURT: Received.

5 (Government's Exhibit 1077 received in evidence)

6 BY MS. KRAMER:

7 Q. What is at the bottom of the first page of Government  
8 Exhibit 1077?

9 A. The bottom is the email -- the last email that we were just  
10 looking at that I had sent to Tom Whittle and David Britt with  
11 the updated bank risk assessment analysis.

12 Q. And what is in the top half of this page?

13 A. It is Tom Whittle's response back to me and David Britt.

14 Q. When did Tom Whittle send his response?

15 A. Four days later.

16 Q. And what did he say in his response?

17 A. He wrote: "Brian - I appreciate all the hard work you and  
18 Cindy put into this over the past several months. Tom."

19 Q. Had you put any work into this analysis between when you  
20 first sent it in November of 2016 and when you updated it in  
21 January 2017?

22 A. No.

23 Q. Did you have an understanding when you got this email of  
24 why Tom Whittle was thanking you for hard work over the past  
25 several months that you had not put in?

J2kdmid3

Sweet - direct

1 A. That, again, it is just an attempt to camouflage the real  
2 reason for why we were adding these four additional names to  
3 this listing.

4 Q. What did you understand was the purpose of adding these  
5 names to the listing and moving Citi to the top of the list?

6 A. So that if the -- so that KPMG would have a reason to point  
7 back to for any additional actions that it decided to take from  
8 a national office perspective, that it could point to this  
9 list, or this screening analysis as the reason for making those  
10 changes, why national office would provide support for these  
11 engagements when in fact the real reason was because we had  
12 received this preliminary listing from Jeff Wada.

13 Q. All right. Aside from the actions you've already testified  
14 about, did you take any other action in January 2017 in  
15 response to getting this list from Jeff Wada?

16 A. Yes.

17 Q. What actions did you take?

18 A. I discussed with both Paul Tupper, who was a lead partner  
19 at CitiGroup, the fact that we had an idea or a very strong  
20 indication that the PCAOB would be inspecting. And I remember  
21 also calling and speaking with the lead audit partner for  
22 National Bank Holdings as well as the lead audit partner for  
23 Midland States bank, to let both of them know that the PCAOB  
24 was likely going to inspect their bank audit engagements that  
25 year.

J2kdmid3

Sweet - direct

1 Q. Let's look at what's marked for identification as  
2 Government Exhibit 1074.

3 Do you recognize this exhibit?

4 A. Yes.

5 Q. How do you recognize it?

6 A. It is an email that I sent from my KPMG account.

7 Q. On what date?

8 A. Wednesday, January 11, 2017.

9 MS. KRAMER: The government offers Government Exhibit  
10 1074.

11 THE COURT: 1074 received.

12 (Government's Exhibit 1074 received in evidence)

13 BY MS. KRAMER:

14 Q. OK. So looking at the email on the bottom three-quarters  
15 of the box that's popped out right now, what's the subject line  
16 of the email you sent to Stephen Penn on Wednesday, January 11,  
17 2017?

18 A. The subject says, "Happy new year."

19 Q. Who is -- what role did Stephen Penn play at KPMG as of  
20 January 11, 2017?

21 A. Steven Penn was the lead audit engagement partner that had  
22 been assigned to National Bank Holdings.

23 Q. Was National Bank Holdings on the list Wada shared on  
24 January 9th?

25 A. Yes.

J2kdmid3

Sweet - direct

1 Q. And in the second paragraph of your email to Stephen Penn,  
2 you wrote: "Separately I wanted to run something past you.  
3 Would you mind letting me know when you have a couple of  
4 minutes to chat, and what number is best to reach you on?"

5 What did you want to run past Stephen Penn on  
6 January 11, 2017?

7 A. I wanted to tell Stephen Penn that we had a good idea --  
8 very strong inclination, where I had gotten a heads up, that  
9 his bank, National Bank Holdings, would be inspected by the  
10 PCAOB that year.

11 Q. Did Stephen Penn respond to your email?

12 A. Yes.

13 Q. What did he say in his response at the top of Government  
14 Exhibit 1074?

15 A. He said: "Thanks Brian. Now and the rest of today is good  
16 or tomorrow afternoon." And then he provided me with his phone  
17 number.

18 Q. Did you have the conversation with Stephen Penn that you  
19 wanted to have?

20 A. Yes.

21 Q. What did you tell him?

22 A. I told Steven that the bank he worked on, National Bank  
23 Holdings, had come up in a conversation with a former colleague  
24 at the PCAOB and that that meant that it had a very strong  
25 likelihood of getting picked by the PCAOB for inspection that

J2kdmid3

Sweet - direct

1 year and that he should try and do a really good audit.

2 Q. Did you tell him anything specific about National Bank  
3 Holdings?

4 A. Yes.

5 Q. What did you tell him?

6 A. I remember one of the things that Cindy told me that Jeff  
7 Wada had shared with her about National Bank Holdings was that  
8 part of the reason why the PCAOB was likely to inspect it was  
9 because it had a specific risk indicator.

10 (Continued on next page)

J2K5mid4

Sweet - direct

1 BY MS. KRAMER:

2 Q. What did Cynthia Holder tell you Jeffrey Wada shared with  
3 her was the risk indicator for National Bank holdings?

4 A. That Stephen Penn, for this audit engagement, had been  
5 identified as a fly-in partner; that Stephen Penn was based in  
6 Kansas City but this audit opinion was being issued out of the  
7 KPMG Denver, Colorado, office and so that was one of the risks  
8 that made it likely that this would be picked for inspection.

9 Q. What was the status of the National Bank Holdings audit as  
10 of January 11th, 2017?

11 A. It was still a live audit which meant the audit was still  
12 in progress and the audit opinion had not yet been issued.

13 Q. Why did you want Stephen Penn to know that there was a very  
14 strong likelihood of his engagement National Bank Holdings  
15 getting picked by the PCAOB that year?

16 A. Because he was the lead audit partner, he was the one that  
17 had that primary oversight of the audit work, and I wanted him  
18 to know how important it was that he do the best audit work  
19 possible so that if the PCAOB did in fact select and pick  
20 National Bank Holdings, that it would have the best likelihood  
21 of going through that inspection by the PCAOB without receiving  
22 any comment forms.

23 Q. How did Steven Penn respond?

24 A. He told me how thankful he was to, that he was very  
25 thankful for getting the information, that he would try and do

J2K5mid4

Sweet - direct

1 the best he could on his audit.

2 Q. Let's look at what's marked for identification as  
3 Government Exhibit 1075. Do you recognize this exhibit?

4 A. Yes.

5 Q. How do you recognize it?

6 A. I recognize this to be an e-mail that I sent from my KPMG  
7 e-mail account.

8 Q. On what date?

9 A. Also on January 11, 2017.

10 MS. KRAMER: The government offers Government Exhibit  
11 1075.

12 THE COURT: 1075 received.

13 (Government's Exhibit 1075 received in evidence)

14 BY MS. KRAMER:

15 Q. So, what was the subject line of this e-mail that you sent  
16 to Andrew Davidson on January 11th, 2017?

17 A. The subject said: Time for a quick chat?

18 Q. What was Andrew Davidson's role at KPMG at the time?

19 A. David Anderson was also a lead audit partner in the banking  
20 group and he was the partner in charge of the Midland States  
21 Banking audit engagement.

22 Q. Was midland states one of the engagements on the lists that  
23 Cynthia Holder told you Wada shared with her on January 9th?

24 A. Yes.

25 Q. Let's look at the text of the e-mail. What did you write



J2K5mid4

Sweet - direct

1 in the sentence that begins: Would you mind...?

2 A. I wrote: *Would you mind letting me know when you have a*  
3 *couple of minutes to chat and what number is best to reach you*  
4 *on?*

5 Q. What did you write in the next sentence?

6 A. *I wanted to try and talk through something with you.*

7 Q. What did you want to talk through with Andrew Davidson?

8 A. I wanted to tell him pretty much the same thing that I had  
9 told Steven Penn; that his banking engagement, Midland States,  
10 had come up during a conversation with an old colleague at the  
11 PCAOB and that it was very likely going to get inspected by the  
12 PCAOB that year.

13 Q. Did you in fact have that conversation with Andrew  
14 Davidson?

15 A. Yes, I did.

16 Q. Why did you tell him that had come up during a conversation  
17 with an old colleague at the PCAOB?

18 A. Because I also wanted Andrew Davidson to be aware of the  
19 likelihood of the PCAOB picking his bank that year and that,  
20 again, to encourage him to try and do the best audit he could.

21 Q. Why did you want him to think this had just come up in a  
22 conversation?

23 A. Well, I didn't want him to know the real source of this  
24 information, that we were getting this confidential information  
25 from the PCAOB. I wanted to characterize it more as just an

J2K5mid4

Sweet - direct

1 accident, like it just happened to come up randomly. But, I  
2 also wanted him, obviously, to take action and do the best  
3 audit he could on that engagement.

4 Q. What was the status of the audit of Midland States as of  
5 January 11th, 2017?

6 A. It was also still a live audit, meaning that the opinion  
7 hadn't yet been signed.

8 Q. Let's look back at what's in evidence as Government Exhibit  
9 655. You have testified about the upper right corner of this.  
10 What is on the rest of the document?

11 A. The rest of this document reflects notes that I took on  
12 February 3rd during a conversation I had with Jeffrey Wada --  
13 excuse me, during a conversation I had with Cindy Holder after  
14 she told me she had just had a conversation with Jeffrey Wada  
15 where Jeffrey Wada had provided to Cindy Holder the complete  
16 listing of all issuers that the PCAOB was planning on  
17 inspecting in 2017.

18 Q. And is this your handwriting on the entirety of Government  
19 Exhibit 655?

20 A. Yes, it is.

21 Q. Where were you when you had the conversation with Cindy  
22 Holder in which she relayed this information to you?

23 A. I was working out of my home office in California.

24 Q. And what telephone did you use for this conversation?

25 A. My cell phone number.

J2K5mid4

Sweet - direct

1 Q. What, if anything, does Cynthia Holder tell you at the  
2 beginning of the call?

3 A. I remember answering her call and she said grab a pen.

4 Q. After she told you to grab a pen, what did she tell you?

5 A. That she had just received the complete inspections list  
6 from Jeffrey Wada for where the PCAOB was planning to inspect  
7 for KPMG in 2017.

8 Q. What did you understand her to mean when she made reference  
9 to the complete inspection list?

10 A. That the planning information had been finalized at the  
11 PCAOB for KPMG and that Jeff had gone in again and accessed,  
12 from the PCAOB's IIS system, and had given Cindy every name.

13 Q. Every name of what?

14 A. Of where the PCAOB would be inspecting for KPMG in 2017.

15 Q. After Cindy Holder told to you grab a pen, what did you do?

16 A. I did get a pen, a blue pen, and I grabbed the same folder  
17 that I had used back in January that was sitting on my desk  
18 again, and started writing down what she was telling me.

19 Q. So, after you had the pen and the manila folder in hand,  
20 what happened next on that phone call?

21 A. She started reading to me the ticker symbols, which are  
22 like the stock trading symbols of the names that she had  
23 written down from her conversation with Jeffrey Wada.

24 Q. Can you explain, briefly, what a ticker symbol is?

25 A. A ticker symbol is anything from one to three or four

J2K5mid4

Sweet - direct

1 characters that are used to trade stock, so it's like the stock  
2 trading symbol. Because these are public companies and public  
3 company audits, they all have a stock trading symbol.

4 Q. Can you give some examples of ticker symbols of commonly  
5 known companies?

6 A. Yes. CitiGroup is C. I think IBM is IBM. Disney is DIS.

7 Q. What did Cindy Holder tell you Jeffrey Wada had told her  
8 about how he got this information?

9 A. She explained that Jeff had again gone in and accessed the  
10 planning information from the PCAOB's IIS system and had gone  
11 into the GNF planning profile, specifically. And the ticker  
12 symbols are one of the left most columns and so he had just  
13 read down the list to her of those ticker symbols.

14 Q. And what, if anything, did she say about how he gave her  
15 this information?

16 A. She told me that he had told her that her grocery list was  
17 ready. So, he had specifically referred to it as a grocery  
18 list.

19 Q. What did you do as she read you the stock ticker symbols  
20 for the PCAOB inspection targets that Wada had given to her?

21 A. I started to write those stock ticker symbols down. And I  
22 remember we got through a few of them, the first 10 or so, and  
23 I didn't recognize most of those stock ticker symbols just off  
24 the top of my head and so I told her to hold on, and I went and  
25 opened up an Excel file that I had which was the original data

J2K5mid4

Sweet - direct

1 submission that KPMG had provided to the PCAOB that had the  
2 complete listing of KPMG audit engagements so that I could  
3 cross reference the ticker symbols to the actual audit  
4 engagement name.

5 Q. So, looking at Government Exhibit 655, where on this  
6 document did you start to write down the ticker symbols as she  
7 gave them to you?

8 A. There is a big line in the middle of this page going  
9 horizontally, and so underneath that line I started writing  
10 down each of the ticker symbols and then the name of the  
11 company next to it.

12 Q. And so, where did you get the information looking, for  
13 example, at the first line where it says AHC Dallas, AH Bello  
14 Corp. What, of that line, came from Cindy Holder, and what of  
15 that line came from the document you looked at on your  
16 computer?

17 A. The AHC ticker symbol, and I believe also the city name,  
18 Dallas came directly from Cindy Holder. That's what she had  
19 received from Jeffrey Wada. And then the name next to it, AH  
20 Bello Corp, that's what I pulled down or matched it to the data  
21 submission that I was accessing at the same time as writing  
22 down these notes.

23 Q. Let's go through some of the items on the list. So, the  
24 second line AMAT, and then it says Santa Clara. What do you  
25 understand Santa Clara to be a reference to?

J2K5mid4

Sweet - direct

1 A. It is a reference to the Santa Clara KPMG office where the  
2 audit for Applied Materials was being done.

3 Q. And what is Applied Materials relative to AMAT?

4 A. Applied Materials is the issuer engagement name, like the  
5 actual issuer name of the company, and AMAT is the stock ticker  
6 symbol.

7 Q. And what is the date in those brackets there of 10/31?

8 A. I believe the date is a reference to the year-end date, the  
9 fiscal year-end date of the company, so 10/31 would be the  
10 year-end date of Applied Materials, to the best of my  
11 recollection.

12 Q. And so, in this line where did the -- which information in  
13 this line came from Jeffrey Wada via Cynthia Holder and which  
14 came from the document you were looking at on your computer?

15 A. The stock ticker symbol came directly from Jeff to Cindy.  
16 I believe also the city but, again, the information to the  
17 right of that. So, the name Applied Materials and what's in  
18 the bracket were my notes.

19 Q. Let's look at the next two lines, BKU, Bank United; and  
20 BCR, CR Bard. To the left of those do you see the letters  
21 AQSN?

22 A. Yes.

23 Q. What was that a reference to?

24 A. That's a cross-reference that both of those engagements had  
25 been subject to that Audit Quality Support Network so they were

J2K5mid4

Sweet - direct

1 part of an existing national office program.

2 Q. Where did you get that information?

3 A. That I, after going through this listing, I also went and  
4 checked which of these engagements had been part of a  
5 monitoring program or this Audit Quality Support Network so I  
6 could have more complete information about these engagements.

7 Q. Now, let's look down at Macy's -- so, Mr. Urbanczyk, if you  
8 could highlight all the way across -- what is all of that  
9 information in those big brackets next to Macy's?

10 A. For Macy's, in addition to just finding out from Jeffrey  
11 Wada that Macy's was going to be inspected by the PCAOB that  
12 year, Jeffrey Wada had also provided to Cindy the specific  
13 focus areas that the PCAOB was going to inspect. So, they were  
14 not only going to inspect Macy's but the exact areas of the  
15 financial statement audit that they were going to look at.

16 Q. And so, when you wrote that down on these notes, where did  
17 that information come from?

18 A. It had come from Jeffrey Wada to Cynthia Holder and that is  
19 what Cynthia Holder was telling me he had given her.

20 Q. I want to direct your attention to, in the middle left side  
21 of the page, do you see two question marks in circles in the  
22 margin next to FDL and FNGN, I believe?

23 A. Yes.

24 Q. What are those question marks a reference to?

25 A. To the best of my recollection, those were two ticker

J2K5mid4

Sweet - direct

1 symbol names that I couldn't easily find on the data list that  
2 I was looking at and trying to cross-reference to, and so I  
3 couldn't figure out if these were actually KPMG clients or not,  
4 KPMG issuer engagements. And so, I put a question mark there  
5 because I wasn't quite sure.

6 Q. And when you put that question mark there, did you also  
7 write down those names that are next to those ticker symbols?

8 A. Yes.

9 Q. In what order did you write down the ticker symbols and  
10 check the list?

11 A. I did it in the order in which Cindy was giving them to me,  
12 which was the same order that she had said she had received  
13 from Jeffrey Wada so it's generally in alphabetical order.

14 Q. Okay. And the document that you were looking at on your  
15 computer you said was the firm's data submission. What do you  
16 mean?

17 A. As I testified to yesterday, the first step in the PCAOB's  
18 planning process is to -- that it requires the firm to provide  
19 it a data submission, they call it the GNF planning profile,  
20 and that the PCAOB ends up taking that data submission and then  
21 they add a bunch of columns and they use that to complete its  
22 planning analysis. And so, because that data submission is  
23 KPMG information that they provided to the PCAOB, I was also  
24 given a copy of that because I was in the inspections group in  
25 the national office.



J2K5mid4

Sweet - direct

1 Q. So you were looking at the version, to be clear, that KPMG  
2 had provided to the PCAOB, not the version that the PCAOB then  
3 made changes to on their end?

4 A. That's right. Just the raw information, yeah.

5 Q. And what, if anything, did you do with the planning  
6 document that you were looking at while you went through and  
7 took down this list from what Cynthia Holder told you she had  
8 been told by Jeffrey Wada?

9 A. Because this data submission document had all 700 or so of  
10 KPMG's audit engagements, when I got to one, when I found the  
11 one that was on this Jeffrey Wada-provided listing, I  
12 highlighted the entire row in yellow on the Excel spreadsheet  
13 and so that I could filter it by those colors later and kind of  
14 just have the single snapshot of exactly which of those issuers  
15 on the entire data submission were the ones that were going to  
16 get picked that year. And, I also added a couple of different  
17 columns into that data submission so that I could then track  
18 which of those engagements were part of this AQSN or one of the  
19 monitoring programs, which ones were getting this national  
20 office support already.

21 Q. Why did you do that?

22 A. Because, again, I remember back in March of 2016, when the  
23 initial listing had been provided from Jeffrey Wada, that that  
24 was the information that David Britt had shared with Thomas  
25 Whittle and David Middendorf and I on the call and that David

J2K5mid4

Sweet - direct

1 Middendorf's instructions on that were that we had to protect  
2 the monitoring program, which meant we needed to protect the  
3 work that the national office was specifically involved in  
4 because that had a bigger impact for KPMG.

5 So, I knew that I would end up or my plan was to share  
6 this immediately with Thomas Whittle, David Britt and David  
7 Middendorf, and so having the information about which ones were  
8 in a monitoring program or this national office support I knew  
9 would be directly, or would be very important to those people.

10 Q. So, when you learned that one of the engagements on this  
11 February 3rd list was subject to national office support what,  
12 if anything, did you do to reflect that on Government Exhibit  
13 655?

14 A. On the left side of the ticker symbol name I wrote AQSN,  
15 which is the reference to, again this Audit Quality Support  
16 Network, and then I believe in the section above that is not  
17 highlighted I indicate for those banks which ones, which of  
18 those banks were in a monitoring program, I believe.

19 Q. Okay. Let's zoom out on Government Exhibit 655.

20 what is on the top of the page, aside from the black  
21 ink handwriting that we have already talked about, what is on  
22 the top of the page above that big line?

23 A. There, it's a -- the top of this page reflects additional  
24 information that Jeffrey Wada had shared with Cynthia Holder on  
25 that day, February 3rd.

J2K5mid4

Sweet - direct

1 Q. What, if anything, is the sort of common denominator  
2 between the engagements on the list? We are looking at now,  
3 starting from 1 and Northern Trust and going down through 9 or  
4 8 BMO.

5 MR. WEDDLE: Objection. Vague.

6 THE COURT: Could you clarify, please?

7 MS. KRAMER: Certainly.

8 BY MS. KRAMER:

9 Q. So, do you see the list, Mr. Sweet, that begins with  
10 Northern Trust, and then goes Northern Trust, City, Chemical  
11 Financial, on down through Financial Engines and BMO?

12 A. Yes.

13 Q. Do those KPMG audit clients have anything in common?

14 A. Yes.

15 Q. What do they have in common?

16 A. Those are the population of the banks and other financial  
17 services engagements that are on the list below but it's the  
18 ones that are specific to financial services.

19 Q. Okay. Where did the information come from that is to the  
20 right of the names of those issuers?

21 A. So, similar to what we had discussed below on Macy's, that  
22 Jeffrey Wada, in addition to providing the names of the banks,  
23 he also provided the specific areas of focus from that planning  
24 spreadsheet of the PCAOB, so the specific areas that PCAOB was  
25 going to inspect for the banks in 2017 for KPMG.

J2K5mid4

Sweet - direct

1 Q. And is that what Cynthia Holder told you?

2 A. Yes.

3 Q. Did you also add other information to these notes based on  
4 documents that you looked at?

5 A. Yes.

6 Q. Can you give us some examples?

7 A. So, the first one, Northern Trust, I added the 1 next to  
8 it, so the 1 through 9 -- or kind of 9 is crossed out -- but 1  
9 through 8, those represent the banks. So, of the financial  
10 services issuers, I added and tried to count up, well, how many  
11 banks in this listing of roughly 50, how many of them were  
12 banks and figured out it was about nine.

13 Then, to the left of that, the M and the AQSN  
14 reference, that is also what I added to indicate which of these  
15 engagements were part of the monitoring program or the Audit  
16 Quality Support Network.

17 Q. What is above that line above Northern Trust in the upper  
18 left corner of the page?

19 A. Cindy had told me that during her conversation with Jeffrey  
20 Wada that Jeff had also read off to her a listing that the  
21 PCAOB had been tracking of very bad partners, the audit  
22 partners that they had very big quality concerns.

23 Q. What's your understanding from your experience at the PCAOB  
24 and at KPMG about whether the PCAOB ever shares with KPMG the  
25 entire list of what it considers to be severe offenders?

J2K5mid4

Sweet - direct

1 A. They do not share that information.

2 Q. And, to your knowledge as of February 3rd, 2017, when  
3 Holder gave you this information that Wada gave her looking at,  
4 let's look at all of Government Exhibit 655, what's your  
5 understanding about the status of those audits?

6 A. That for the most part, almost every one of these audits  
7 was still live at this point, which meant that the audit  
8 opinions had not yet been finalized and so new audit work could  
9 be done, added, actions could be taken without any sort of  
10 special documentation.

11 Q. What was your understanding about whether this complete  
12 list, including focus areas, was confidential to the PCAOB as  
13 of February 3rd, 2017?

14 A. I knew this was incredibly confidential information.

15 Q. Let's look at the top right corner of Government Exhibit  
16 655 under the word "board." What does this note reflect?

17 A. These are also notes I took when Cindy shared other  
18 information that Jeff had shared with her on this phone call,  
19 or Jeff told Cindy and she was, in turn, telling me the  
20 board -- the PCAOB -- the Public Company Accounting Oversight  
21 Board -- and that they were planning to cut inspections  
22 globally, cost-cutting -- in order to do some cost-cutting.  
23 And that second bullet says their new mode of operation was to  
24 keep asking "and, and, and" with respect to their risk  
25 assessment.

J2K5mid4

Sweet - direct

1 Q. Did you have any understanding of whether the Board's  
2 priorities was confidential to the PCAOB?

3 A. Yes.

4 Q. What was your understanding?

5 A. I knew that that was, again, confidential information being  
6 shared.

7 MS. KRAMER: Your Honor, I note that it is 1:00. If  
8 you would like me to stop for lunch, this may be a good  
9 breaking point.

10 THE COURT: Why don't we break for lunch.

11 Folks, we are going to take an hour for lunch.  
12 Please, leave your note pads on your chairs, have a good lunch,  
13 and we will start back at 2:00.

14 (Continued on next page)

J2K5mid4

Sweet - direct

1 (Jury not present)

2 THE COURT: You may be seated.

3 Anything anybody wanted to address before lunch?

4 MS. MERMELSTEIN: Yes, your Honor. I will just wait  
5 for Mr. Sweet to step out.

6 (Witness steps down)

7 MS. MERMELSTEIN: A number of matters, your Honor,  
8 that I think need to be addressed before Mr. Sweet's  
9 cross-examination begins, which I expect will be this  
10 afternoon, about which the parties have not been largely able  
11 to reach any agreement.

12 So, first, I think the government was largely excluded  
13 from the communications regarding this but there was a subpoena  
14 served on, ultimately on Mr. Sweet, through his counsel. There  
15 was some fighting, I think, about whether or not he was evading  
16 service. I understand that Mr. Sweet's counsel has explained  
17 that the characterization of that as evasion was inaccurate.

18 Defense counsel for Mr. Wada marked as an exhibit the  
19 letter that Mr. Morvillo wrote explaining his view that that  
20 was an unfair characterization and that is not what happened  
21 and, ultimately, it was all resolved. I think, one, I can't  
22 see any basis for admission of that letter; but secondarily, I  
23 don't think it would be appropriate to cross-examine Mr. Sweet  
24 about his purported evasion when it appears from what the  
25 government knows that that's not an accurate characterization.

J2K5mid4

Sweet - direct

1 And so, questions along those lines would not have an  
2 appropriate foundation. My understanding, if I am getting this  
3 right, is Mr. Middendorf's counsel does not intend to  
4 cross-examine him about that and that Mr. Wada's counsel is not  
5 definitely going to do it has not made a decision but I think  
6 we need a ruling before cross-examination begins.

7 Do you want me to go through my whole list or do you  
8 want me to take them one at a time?

9 THE COURT: Probably one at a time.

10 Do you know if are you going to ask about that?

11 MR. COOK: Concerning the possibility of  
12 cross-examination on the evasion of service, Mr. Sweet's  
13 attempt to evade to receive a subpoena that called for the  
14 disclosure of documents that reveals lies that he told to the  
15 government, that's relevant. I don't know that we are going to  
16 go in that direction, I don't know if he is -- how he is going  
17 to testify on cross. But, if we were to pursue that, I don't  
18 see anything improper with that. And the government has  
19 represented that he will deny that he was evading service so  
20 I'm not sure what the prejudice or the harm is.

21 THE COURT: Do you have a basis for believing he  
22 evaded service?

23 MR. COOK: Yes.

24 THE COURT: What is it?

25 MR. COOK: We had a process server outside of his



J2K5mid4

Sweet - direct

1 hotel for two full days.

2 THE COURT: Was he there?

3 MR. COOK: They called up from the front desk. He  
4 refused to come down to receive the subpoena.

5 MS. MERMELSTEIN: Well, as I understand it, a person  
6 who did not identify themselves in any fashion called up saying  
7 will you come downstairs? And Mr. Sweet said I don't -- no.  
8 That is, absent information that he knew that person was or  
9 why, the notion that that constitutes evading process is  
10 nonsensical. He also is someone who is represented by counsel  
11 so for him to say I'm not personally going to do this seems  
12 not, at all, like evasive behavior.

13 So, I think the question is improper and prejudicial,  
14 given what it suggests.

15 MR. COOK: Your Honor, three points.

16 One, I don't think we should be required to preview  
17 our cross-examination.

18 Second, his lawyer, in response to our request to  
19 accept service, responded with the words "no can do" which is  
20 what forced us to have to attempt to serve him personally. So,  
21 that is a problem of their own making.

22 THE COURT: I don't think it is a proper question.

23 MR. COOK: I'm sorry?

24 THE COURT: I don't think it is a proper question.

25 MS. MERMELSTEIN: So, number two, your Honor, relates

J2K5mid4

Sweet - direct

1 to Mr. Wada's medical situation. I think we can fight about  
2 the extent of the admissibility of that another time. I wanted  
3 to raise that with your Honor because Mr. Sweet, of course, has  
4 no firsthand knowledge about that. I expect he would know what  
5 was told to him by Ms. Holder, all of which is hearsay and so I  
6 can't see any proper basis for putting questions to him about  
7 Mr. Wada's medical situation. Again, the government is not  
8 suggesting that at least some of that could not properly be put  
9 as evidence before the jury, but I don't think this witness has  
10 a basis, an appropriate basis to answer those questions and so  
11 I wanted to flag that issue.

12 THE COURT: Do you intend to ask about that?

13 MR. COOK: I don't know, your Honor. The witness  
14 hasn't even finished direct examination. However, if I were to  
15 ask those questions, I think they would be proper in order to  
16 again, as Mr. Weddle explained thoroughly earlier, the full  
17 scope of the relationship between Mr. Wada and Ms. Holder and  
18 what Ms. Holder communicated to Mr. Sweet, including reasons  
19 why Mr. Wada may have sent his résumé to Ms. Holder, reasons  
20 why he may have been interested in pursuing employment at KPMG.

21 THE COURT: Well, it is double hearsay so why would it  
22 be -- I can see how that level would go to Mr. Wada's state of  
23 mind, arguably, but how would it go to Ms. Holder's state of  
24 mind? How would it be an exception to what she said?

25 MR. COOK: I'm sorry. What she said?

J2K5mid4

Sweet - direct

1 THE COURT: There is another level of hearsay in that  
2 what Ms. Holder is saying to Mr. Sweet is hearsay.

3 MR. COOK: Your Honor, all of their -- the government  
4 has elicited virtually every aspect of the conversation between  
5 Ms. Holder and Mr. Sweet with the exclusion of this particular  
6 evidence which colors, it adds color and context to the nature  
7 of this so-called conspiracy.

8 THE COURT: Right, but it's -- well, it's not  
9 statements in furtherance of the conspiracy. I don't know how  
10 you can argue that it is.

11 MR. COOK: They're all wrapped up together. The  
12 context of their communications, an essential component of that  
13 is his medical condition; what they were discussing, why were  
14 they discussing it, specific timing of those discussions. All  
15 of that is relevant to the defense.

16 MR. WEDDLE: Can I add one thing on this, your Honor?

17 As I said before the break, the manner in which the  
18 government elicited testimony from Mr. Sweet was in an  
19 undefined way that they chose to ask the questions which was:  
20 *Based on your conversations with Ms. Holder, for example please*  
21 *interpret this document.* And he proceeded to do so. So, for  
22 the government to now say he has no base of knowledge for  
23 interpreting the document, I think, is another example of the  
24 prejudice to the defense and for us to ask him questions, for  
25 example, about Cynthia Holder's notes and what his

J2K5mid4

Sweet - direct

1 understanding is based on his discussions with Ms. Holder, is  
2 no different than when the government is doing it, and it  
3 provides context to the testimony that he already gave. It is,  
4 once again, it is I think a different argument from what we  
5 made before the break, your Honor, or at the last break,  
6 because this is not an argument about the redacted portion,  
7 this is an argument about the things that he did testify about  
8 and about the document that is in evidence and asking him to  
9 interpret the document that is in evidence.

10 THE COURT: The document that's in evidence doesn't  
11 include anything about the medical condition?

12 MR. WEDDLE: I think it depends on what the witness is  
13 going to say, your Honor.

14 THE COURT: Okay.

15 MR. WEDDLE: As Mr. Cook said, your Honor, and as we  
16 have said in our letter that was submitted last night regarding  
17 the evidence that's admissible during the cross-examination of  
18 Mr. Sweet, I have never seen a cooperator who has lied,  
19 purported to come clean, lied again, purported to come clean,  
20 and lied again, more than this cooperator has.

21 THE COURT: Really?

22 MR. WEDDLE: Yes, your Honor. And I was a federal  
23 prosecutor for 15 years.

24 THE COURT: I know.

25 MR. WEDDLE: And I have never seen it and I was Deputy

J2K5mid4

Sweet - direct

1 Chief of the Appeals Unit in the Southern District of New York  
2 for three years. I have never seen it. I have had a  
3 cooperator in a case of mine who admitted, during trial prep,  
4 that he had committed a tax felony. He pled guilty to that  
5 crime before he testified. We are receiving 3500 material from  
6 last night, your Honor, that has new disclosures about tax  
7 crimes. So, we should not be required to preview our  
8 cross-examination until Mr. Sweet and his lawyer are no longer  
9 in a position to try to clean up the lies that he has told.  
10 So, we are happy to do that after he is done with direct  
11 examination and can no longer be prepped by the government, can  
12 no longer be prepped by his lawyer to handle cross-examination  
13 questions, and we would be happy to do that at length and in  
14 detail, your Honor, because your Honor, I'm sure, hasn't read  
15 the material but there are 40 -- 4-0 -- marked 3500 exhibits  
16 with respect to Mr. Sweet. There is more than 30 meetings with  
17 the government. They are replete with lies and, as far as I  
18 know, there has been no disclosure that there has been any  
19 threat to Mr. Sweet to say that he has violated his agreement.  
20 And to deny him the benefits of his agreement. There has been  
21 no disclosure that anyone has discussed with Mr. Sweet the  
22 possibility that his bail might be revoked for committing  
23 felonies while he is on release. There has been no discussion  
24 about Mr. Sweet taking responsibility for his felonious actions  
25 and pleading guilty to new crimes perhaps with a new agreement.

J2K5mid4

Sweet - direct

1           There has been none of that, your Honor. There has  
2       been no discussion, as far as I know, about Mr. Sweet taking  
3       responsibility for lying to the government in earlier meetings  
4       and claiming that he is coming clean or saying that this is it,  
5       these are my tax lies, for example, and hiding other material  
6       that has not come to light, if at all, until much later.

7           So, all of these areas are fair cross-examination,  
8       it's all admissible evidence. We would be happy to proffer it  
9       step by step with your Honor after Mr. Sweet is disabled from  
10      figuring out a new way to weasel out of his lies.

11          THE COURT: Would you like to respond?

12          MS. MERMELSTEIN: I guess so, your Honor.

13          I mean, I won't bother disputing the characterization  
14      of Mr. Sweet's lies which I think have been oversold or his  
15      unusual status as a cooperator which I have been doing this for  
16      15 years but I don't find it unusual but I think that's all  
17      irrelevant.

18          We were talking about whether or not he could be  
19      questioned about his knowledge of Wada's medical situation. I  
20      don't find the relevance of anything Mr. Weddle just said to  
21      that. He has no personal knowledge. That's the end of that.  
22      He shouldn't be asked questions about it. To the extent that  
23      it is appropriate for there to be proof of Mr. Wada's medical  
24      situation, that will have to come from an appropriate,  
25      admissible source.

J2K5mid4

Sweet - direct

1           So, on that I think we would like a ruling and we are  
2           at the lunch break. We are not going to have a long break  
3           before cross, we are trying to be efficient to get rulings so  
4           things can come in in a logical order.

5           THE COURT: Did you have another issue?

6           MS. MERMELSTEIN: I do. I apologize, your Honor.

7           The other issue is I think we obviously didn't receive  
8           this letter until we woke up this morning so we haven't put  
9           something in in response, but I think the letter is not correct  
10          about the law and I agree, I think, with Mr. Weddle, that with  
11          respect to some of these it may be that an advanced ruling is  
12          not possible because things have to play out before a ruling is  
13          possible but there are essentially four arguments that are made  
14          in the letter with respect to the purported admissibility of  
15          all of these documents that relate to Mr. Sweet's ownership of  
16          investment properties and tax issues in broad strokes.

17          THE COURT: Let me just cut it short because I do want  
18          to give you a chance to say what you want to say but last night  
19          I read -- I took some time and I read all of those cases and I  
20          basically am aware of the law which I think is largely properly  
21          stated. There is a different -- 608B precludes extrinsic  
22          evidence only in the limited category that it does and if  
23          something is proper for bias or motive or for some other  
24          reason, there can be extrinsic evidence but it might be  
25          excludable under 403, basically. But if there is something

J2K5mid4

Sweet - direct

1 else you want to say for the record, you can.

2 MS. MERMELSTEIN: No, your Honor.

3 I think that is certainly a correct statement of the  
4 law that your Honor has just given. I think that part of the  
5 problem comes in terms of characterizing what turns something  
6 from one category into the other and when, sort of, it trips  
7 into bias. Obviously there is a whole category, they've made  
8 arguments regarding both prior inconsistent statements and  
9 impeachment by contradiction. That would obviously require  
10 Mr. Sweet to say something different on the stand which has not  
11 yet happened and I would note that many of the documents that  
12 have been marked are not his statements at all, they're sort of  
13 other things, and it may be case by case but we wanted to flag  
14 for your Honor that I think the letter goes much too far in  
15 suggesting what is likely to be admissible and we can take it  
16 up as it comes.

17 THE COURT: I think we will have to take it up as it  
18 comes and I may need to look at these documents.

19 Now, I assume that the government is going to put in  
20 the cooperation agreement?

21 MS. MERMELSTEIN: Yes. It is coming in.

22 THE COURT: It is coming in. You are going to offer  
23 it?

24 MS. MERMELSTEIN: We are.

25 THE COURT: And the reason the cooperation agreement



J2K5mid4

Sweet - direct

1 frequently comes in, I assume, notwithstanding 608B, I know  
2 there is some law that the government can take the sting out of  
3 the impeachment that would happen on cross but the reason it  
4 comes in I would think, is because of the bias principle.

5 MS. MERMELSTEIN: Yes, I think it comes in both for  
6 that and his credibility is attacked, the truth telling  
7 provisions are relevant, and sort of the contract itself is of  
8 course not hearsay so it is coming in; I understand there is no  
9 objection to it coming in from the defense, subject of course  
10 to your Honor admitting it.

11 And, the final one on defendant's exhibit for cross --  
12 we obviously don't have anything that's purely for impeachment  
13 so there may be more -- is that Mr. Wada has marked the  
14 entirety of the chats from Mr. Sweet's phone. I'm not  
15 suggesting that some of those chats are not properly admitted,  
16 they may well be, but it is clear that I think the entirety is  
17 not; it is much too broad and not relevant. And so, I think  
18 that we have asked that they offer only those portions that are  
19 in fact relevant which we can take up one by one. We just want  
20 to note our objection to the entire exhibit coming in.

21 THE COURT: All right. Do you want to respond to  
22 anything?

23 MR. WEDDLE: Yes, your Honor.

24 The absence of communications is obviously highly  
25 relevant here and so the entirety of Mr. Sweet's chats prove

J2K5mid4

Sweet - direct

1 that he did not have a single text message with our client  
2 Jeffrey Wada. Not one. We are not offering them all for their  
3 truth but that is a single immediate reason why the entirety of  
4 those chats are admissible. There are other reasons that  
5 different portions would be admissible as well but the context  
6 is extremely important here and for the government to try to  
7 try this case with case with blinders on is extremely  
8 prejudicial to the defendants.

9 THE COURT: You can ask a single question about  
10 whether the witness has had any chats with your client and I  
11 don't know that that -- whatever the answer is that doesn't get  
12 in all his chats.

13 MR. WEDDLE: The last witness we would ever want to  
14 rely on for a truthful statement in favor of our client is  
15 Brian Sweet.

16 THE COURT: Okay.

17 MS. MERMELSTEIN: That question is obviously the  
18 correct way it do it. The government is not trying the case  
19 with blinders and we are not trying to prejudice the defense,  
20 but the rules of evidence apply in a trial and they have to be  
21 enforced.

22 There are any number of ways to prove the absence of  
23 that without putting in every single personal text message or  
24 other relevant text message in that including that the  
25 government would be happy to stipulate that with respect to the

J2K5mid4

Sweet - direct

1 chats recovered from that phone there were none with Mr. Wada.

2 So, I think that that's not a justification for  
3 dumping in all kinds of irrelevant things or the content of the  
4 texts could be redacted and just the sort of who you are  
5 communicating with could be left in. That would also establish  
6 that there is nothing with Mr. Wada.

7 So, there is lots of ways to do it.

8 THE COURT: Yes.

9 Just a preview on the issue raised in the letter. I  
10 have read a bunch of cases about this including the ones that  
11 you cite and the cooperation agreement can be extrinsic  
12 evidence that comes in. I think there are situations where  
13 bias is established but it is also the case that something  
14 that's addressed in the cooperation agreement that is sort of  
15 another crime or another bad act is very commonly excluded  
16 under Rule 403 because the idea is you don't want to have a  
17 mini trial relating to things that are essentially biased as to  
18 which is already established by the cooperation agreement.

19 So, you know, I don't know what you are planning to do  
20 in terms of this tax fraud issue. I am not going to let you  
21 spend hours of time going through and trying to get a bunch of  
22 documents in that when you put 50 of them together you can  
23 establish tax fraud.

24 MR. WEDDLE: Your Honor, would it be possible to take  
25 up this discussion after Mr. Sweet is in a position where he

J2K5mid4

Sweet - direct

1 can no longer prep for his cross-examination?

2 THE COURT: Sure.

3 MS. KRAMER: Very briefly, your Honor?

4 I am going longer than I expected but I think we will  
5 be done after lunch at some point. So, I don't know how long  
6 the discussion will be that involves the issue that Mr. Weddle  
7 wants to take up then but we are running behind schedule, I  
8 just want to note that. And, for the record and so to that end  
9 I guess I would reraise the issue of possibly sitting Friday to  
10 keep things moving.

11 Also, I just want to clarify something for the record.  
12 Twice today I think Mr. Weddle has characterized one of the  
13 questions I posed to Mr. Sweet about the notes he took of the  
14 January 9th call or the picture of the notes that Cindy Holder  
15 had taken that he discussed with her as based on some amorphous  
16 unidentified collection of conversations with Cynthia Holder.  
17 To be clear, that is not I think what the transcript will  
18 demonstrate. In response to a defense objection for lack of  
19 foundation I asked Mr. Sweet if he had an understanding based  
20 on his conversation with Cynthia Holder quite plainly referring  
21 to the conversation that he was testifying about.

22 So, I don't want our silence on this to be  
23 misconstrued in the record in any way as agreeing that there  
24 was something vague about that question or a lack of foundation  
25 for the following testimony.

J2K5mid4

Sweet - direct

1 THE COURT: Okay. Fair enough.

2 Ms. Lester?

3 MS. LESTER: One more thing, your Honor.

4 Mr. Sweet testified today on direct about a  
5 conversation he had with Mr. Middendorf at a restaurant, I  
6 believe he said that they were standing at a bar area at the  
7 end of a dinner. Mr. Whittle, he said, was also there, and he  
8 mentioned that Mr. Middendorf said to him how pleased he was  
9 that the inspection results had improved from prior years and  
10 this was said to be in the fall of 2016, I believe.

11 We have not seen any indication of this conversation  
12 in the 3500 material which, as Mr. Weddle mentioned, is very  
13 voluminous. What we have seen over time is Mr. Sweet's  
14 recollection of certain events changing. Particularly when the  
15 defense raises a certain issue with the government we sometimes  
16 see a change in how he describes certain events. So, if that  
17 is present in the 3500, we would like the government to point  
18 it out to us. If it is not present in the 3500, I think we  
19 would like an explanation as to why it just came out today.

20 THE COURT: Any response?

21 MS. KRAMER: We will discuss it, your Honor.

22 THE COURT: All right. Okay. We will see you all at  
23 2:00.

24 (Luncheon recess)

25 (Continued on next page)

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Sweet - direct

**A F T E R N O O N   S E S S I O N**

2:14 p.m.

(Jury not present)

THE COURT: Good afternoon.

ALL COUNSEL: Good afternoon, your Honor.

THE COURT: Can we bring the witness in?

MS. KRAMER: Yes, your Honor.

(Jury present)

BRIAN JOHN SWEET,

Resumed, and testified further as follows:

THE COURT: You may be seated.

Good afternoon.

JURORS: Good afternoon.

THE COURT: Ms. Kramer, you may continue.

MS. KRAMER: Thank you, your Honor.

DIRECT EXAMINATION (Resumed)

BY MS. KRAMER:

Q. Mr. Sweet, I just want to ask you a few more questions about what's in evidence as Government Exhibit 655.

MS. KRAMER: Mr. Urbanczyk, could you please enlarge the top part of the page above the line.

Q. Mr. Sweet, looking at the entry number 4, "BankUnited," can you read what it says to the right of "BankUnited"?

A. It says "ORA" in parentheses. Then "Miami." Then "11,800" in parentheses. Then "Jim McGrath/David Britt." And then in

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1 brackets: Loans plus ALL, AFS, plus derivative hedging or  
2 hedge accounting.

3 Q. And what does each piece of that line mean?

4 A. So starting after BankUnited, the first part in  
5 parentheses, ORA, is an indication that this was one of those  
6 internal PCAOB ORA referrals, so that was the reason that it  
7 was being selected.

8 Then Miami would be the KPMG office location where the  
9 opinion is being issued.

10 11,800 would be an indication of that's how many hours  
11 it would take to complete that audit.

12 Jim McGrath is a reference to the lead audit  
13 engagement partner on BankUnited.

14 David Britt served in that EQCR current review partner  
15 role.

16 And then what is in the brackets there, loans,  
17 allowance and AFS, it is a type of investments in the  
18 derivatives. Those were the specific focus areas that Jeff  
19 Wada had provided that PCAOB was planning to inspect.

20 MS. KRAMER: Mr. Urbanczyk, could you highlight the  
21 row number 8 next to Brooklyn, or "Brookline Bancorp."

22 Q. Mr. Sweet, what is in the text in that line next to the  
23 name Brookline Bancorp?

24 A. In parentheses "5800." Then "Joe Gencarella/Alan  
25 Brown/Inga." And then in the box directly next to it it says,

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1 "Loans and leases plus ALL," then "Deposits," and then "AFS  
2 securities."

3 Q. And what do each of those items mean?

4 A. So the parentheses 5800 is again a reference to how many  
5 audit hours it took to -- or was expected to take for the  
6 Engagement Team to complete the audit of Brookline Bancorp.  
7 Joe Gencarella was the lead audit engagement partner for  
8 Brookline. Alan Brown was the EQCR, the second concurring  
9 review partner assigned to that engagement. Inga is a  
10 reference to the senior manager that was working on Brookline.  
11 So that's Inga Tracy Bronson, who was a KPMG senior manager.  
12 She is Inga and then the last name is Tracy Bronson.

13 And then the part that's in that box were the focus  
14 areas, again specific to that were going to be inspected by the  
15 PCAOB for Brookline, so it would be the loans and leases area,  
16 plus the allowance for loan loss focus area, plus deposits, and  
17 then available for sale, securities, which is just part of  
18 their investment portfolio for this bank.

19 Q. To the left of the number 8 in the margin -- in the margin,  
20 do you see where something is crossed out?

21 A. Yes.

22 Q. Do you know what text is underneath the crossout line?

23 A. Yes.

24 Q. What is it?

25 A. It originally said "AQSN."



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Sweet - direct

1 Q. Do you have a memory of why that's crossed out?

2 A. I don't, no.

3 Q. OK. Do you know whether Brookline Bancorp was in the  
4 monitoring program?

5 A. I don't see an "M" next to it so it would lead me to think  
6 that it is not but I don't know one way or another.

7 Q. All right. Let's go down to the bottom half of the page  
8 and look at Macy\*s.

9 So I had asked you before generally about what's in  
10 these brackets. Can you read your handwriting in the brackets  
11 next to Macy\*s?

12 A. Yes, I can.

13 Q. And what's in the first batch of writing?

14 A. So the first part of it says "Net sales." Then it says,  
15 "Pension plan assets and liabilities." And underneath that  
16 it's saying "To" and I'm not sure what the "BA" is saying, but  
17 to not classify a fair value hierarchy using NAV, which is Net  
18 Asset Value; it is an accounting rule.

19 Q. OK. What general auditing issue is captured by that last  
20 note relating to NAV?

21 A. One of the accounting rules that was in place is that  
22 investments -- certain investments could be priced using a net  
23 asset value when there wasn't another, you know, readily  
24 available market price. So, it is some very specific  
25 information about that particular focus area that the PCAOB was

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1 planning to make.

2 Q. OK. And then to the right, what does it say within the  
3 brackets?

4 A. "Inventory," and then again specifying that within the  
5 inventory I believe it is saying "vendor" and then "allowance"  
6 and LIFO.

7 Q. What is LIFO?

8 A. It's again another accounting principle that refers to last  
9 in-first out. When you are accounting for your inventory, you  
10 would take the last items added to your inventory and those  
11 would be the first ones to get relieved when you are expensing  
12 something.

13 Q. OK. What does it say below that?

14 A. Then it says, "Store closures, impairment and other  
15 charges."

16 Q. And underneath that?

17 A. "Non-GAAP measures."

18 Q. OK. Were all of these items in the brackets focus areas  
19 that Cindy Holder told you Jeff Wada had told her for Macy's?

20 A. They're focus areas plus I guess very specific information  
21 about those focus areas.

22 Q. OK. And what is the reference to "store closures"? Was  
23 that a focus area?

24 A. It's information I believe about the focus areas that they  
25 were looking at the impairment and other charges because of the

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Sweet - direct

1 store closures.

2 Q. OK. So after you wrote this document on February 3rd, or  
3 most of it, that's in evidence as Government Exhibit 655, what  
4 did you do next?

5 A. I called Tom Whittle.

6 Q. What did you tell him?

7 A. I told him that we had received the full list of where the  
8 PCAOB was planning to inspect in 2017.

9 Q. In sum and substance, what did he say?

10 A. He was very glad to have received it. He asked me for the  
11 names. And I, you know, read him down not only the names of  
12 the focus area -- I'm sorry, the names of the issuers but then  
13 gave him the additional focus areas that had been provided as  
14 well.

15 Q. Did you have any other calls that day?

16 A. Yes.

17 Q. With who?

18 A. I also spoke with David Britt.

19 Q. What was said in that conversation?

20 A. Very similar to the conversation with Tom. I took him --  
21 told him that, again, we had received a full list of PCAOB  
22 inspections for that year, and that gave him the list of all  
23 the names, read him off all the focus areas, especially for the  
24 banks, pointed out that BankUnited was one of their planned  
25 targets. I remember he commented on that since that was his

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1 own engagement.

2 Q. Could you tell during your conversation whether or not  
3 David Britt was writing down what you were saying?

4 A. I don't -- I don't remember him saying that he was writing  
5 it down, but he and I had several other conversations about the  
6 list after the first call in which he had referenced and  
7 clearly had been thinking about the banks and the focus areas  
8 and why they were, you know, looking at this particular focus  
9 area this many times and that one this many times so he clearly  
10 had been thinking about it and doing some analysis, so it  
11 certainly led me to believe that he had taken notes from my  
12 first conversation with him and written it down.

13 Q. In your conversations with Tom Whittle or David Britt that  
14 day, did you discuss next steps?

15 A. Yes.

16 Q. What was discussed?

17 A. When I spoke with Tom on the first call, I asked him what  
18 he wanted to do next, did he want to set up another call, like  
19 he had done in March of 2016 with Dave Middendorf and David  
20 Britt and Tom and myself so the four of us would talk through  
21 it. And he said, yes, let's have a call but let's do it on  
22 Monday, since it was getting close to -- it was Friday at that  
23 point, and so he asked me to arrange a call on the following  
24 Monday.

25 Q. Between getting the information from Cindy Holder that she

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Sweet - direct

1 had gotten from Jeff Wada on February 3rd and having this call  
2 on Monday, February 6th, what, if anything, did you do with the  
3 information that you had obtained?

4 A. I spoke to a couple of -- besides the call with Tom Whittle  
5 and David Britt and then setting up a calendar invitation for  
6 the following Monday, I had a call with both Paul Tupper, who  
7 was the partner on CitiGroup, and also Diana Kunz, who was the  
8 partner on Chemical, one of the banks.

9 Q. Why did you have calls with Paul Tupper and Diana Kunz?

10 A. I had been -- well, because I knew both of them very well.  
11 Both of them were the lead audit partners on two of the banks  
12 that were on the listing that we had just received, the final  
13 listing, and I was giving them the heads up that they were  
14 going to be inspected.

15 Q. All right. What did you tell Diana Kunz, in sum and  
16 substance?

17 A. I remember when I called Diana, she answered the phone and  
18 said, like, oh, crap, it's never a good thing when you call me.  
19 And I said, Yeah, Diana, we just got a heads up, and it looks  
20 like Chemical is going to get inspected by the PCAOB this year.  
21 I told her what the focus areas were going to be, and asked her  
22 how she was feeling about her audit, whether or not she was  
23 getting support on it, was she subject to monitoring programs,  
24 or did she have any concerns, any questions. And she told me  
25 she felt fairly competent about each of our audit areas.

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1 Q. Did she send you any follow-up emails?

2 A. Yes.

3 Q. About what?

4 A. I remember after ending the conversation with her, shortly  
5 thereafter she sent me an email asking if I had any idea what  
6 the timing was going to be for the PCAOB's inspection, so did  
7 we know when in 2017 it would occur.

8 Q. How did you respond?

9 A. I believe I responded by indicating, no, we don't know the  
10 specific timing.

11 Q. What did you discuss with Paul Tupper?

12 A. Very similar, that we now knew that CitiGroup was in fact  
13 going to get picked by the PCAOB for inspection. We just  
14 reaffirmed the January 9th preliminary listing, and also shared  
15 with Paul Tupper the specific focus areas that had been  
16 provided from Jeff Wada to Cindy that I had written down.

17 Q. Why did you reach out to Diana Kunz and Paul Tupper?

18 A. Well, during my conversation with Tom Whittle as we were  
19 going through, I was sharing with him, you know some of the  
20 different partners, and he knew, because I reported to Tom,  
21 that I had been -- I was the AQSN on CitiGroup and that I knew  
22 Paul Tupper very well. And he said, Oh, yeah, give Paul a  
23 heads up.

24 And when we got to Diana, I had been working closely  
25 with her in 2016 as part of the rereview efforts, the stealth

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1 rereview on First Business Financial, and then when the PCAOB  
2 inspected that engagement, and he said, Oh, yeah, we should  
3 give Diana a heads up. And so I did it in part because Tom  
4 instructed me to but also because I felt I had a very close  
5 relationship with both of those two partners and wanted them to  
6 be aware.

7 Q. Did you have conversations with any other engagement  
8 partners between February 6 -- excuse me, between  
9 February 3rd and February 6th?

10 A. Yes.

11 Q. With who?

12 A. I believe between those dates I also then spoke with both  
13 Stephen Penn and Andrew Davidson.

14 Q. What did you talk to them about?

15 A. They were the two banking partners that had been identified  
16 on the preliminary listing that we had received from Jeff Wada  
17 on January 9th for National Bank Holdings and Midland States.  
18 And I previously told them earlier in January that they were  
19 likely going to get picked. And now after having gotten this  
20 final listing, we knew that they were not, those two banks were  
21 not on the list, so I remember calling them to tell them that.

22 Q. All right. Did you in fact schedule a call for  
23 February 6th?

24 A. Yes.

25 Q. And did that call take place?

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Sweet - direct

1 A. Yes.

2 Q. Who participated in that call?

3 A. It was me, Tom Whittle and Dave Middendorf on that call.

4 Q. Did David Britt participate?

5 A. No.

6 Q. Did you speak with David Britt between February 3rd, when  
7 you got the information, and the February 6th call with  
8 Middendorf and Whittle?

9 A. Yes.

10 Q. Once or more than once?

11 A. More than once.

12 Q. What was the substance of your conversations with David  
13 Britt over that weekend.

14 A. After telling David and giving him the names of all the  
15 issuers at the banks and the focus areas, I let him know that  
16 we were going to have a call on Monday with Dave Middendorf and  
17 that I had talked to Tom Whittle already. And he told me that  
18 he wasn't able to make that call, that he would -- I think he  
19 was traveling on that Monday and he had also clearly been doing  
20 some analysis about the focus areas on the banks and thinking  
21 about why they were picking those banks. And so I remember he  
22 and I discussing kind of the focus areas and the why behind  
23 them a few different times.

24 Q. What gave you the understanding that David Britt had been  
25 doing analysis on the banks that were on the list that Holder



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Sweet - direct

1 shared with you after she got it from Jeff Wada on  
2 February 3rd?

3 A. Again, because I remember him having done like specific  
4 evaluation of like the number of times they were looking at  
5 like the deposits focus area or the number of times they were  
6 looking at loans, and so he had been thinking about the number  
7 of focus area selections for the population of banks that were  
8 on this final listing and trying to figure out why the PCAOB  
9 was choosing to do it that way and what that might indicate  
10 about, you know, the inspections and...

11 Q. All right. Where were you when this call took place on  
12 Monday, February 6th, with Dave Middendorf and Tom Whittle?

13 A. I was here in New York working out of the CitiGroup  
14 offices.

15 Q. Do you know where Dave Middendorf and Tom Whittle were?

16 A. No.

17 Q. Did the call take place over KPMG's conference call system?

18 A. Yes.

19 Q. Who hosted the call?

20 A. We used -- I hosted the call. It was my dial-in number.

21 Q. Did you know during the call where Dave Middendorf was?

22 A. I remember him indicating that he was leaving dinner and  
23 that he was getting into a taxi, and then during the call he  
24 was getting out of his taxi and I believe getting into --  
25 walking into the hotel he was staying in.

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Sweet - direct

1 Q. What did you tell them during the call?

2 A. I remember giving them the list of names, so all of the  
3 information that Jeff had shared, Jeff Wada provided to Cindy,  
4 on the specific names of the issuers. We talked about the  
5 focus areas. And we talked about which ones were part of the  
6 AQSN or monitoring program. I remember sharing with him the  
7 other information that I had written down about those partners  
8 that were severe offenders were on that list.

9 Q. What, if anything, did you tell them about where you got  
10 the list?

11 A. I again made it clear that this had come from, you know,  
12 the former colleague at the PCAOB.

13 Q. Did you have an understanding, based on what Dave  
14 Middendorf said during the call, about whether he was taking  
15 down in any way the list as you read it?

16 A. Yes.

17 Q. What was your understanding of that?

18 A. That he was taking notes. I got the impression he was  
19 taking notes into his phone because he was, you know, leaving  
20 his dinner and his taxi, because there were a number of times  
21 as we were talking through the specific issuers that he was  
22 asking me how to, you know, spell it or what was that ticker  
23 symbol or what was that name again.

24 MS. KRAMER: And could we pull up, Mr. Urbanczyk,  
25 Government Exhibit 655, in evidence.

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Sweet - direct

1 Q. So, during the call did you go through the entire list  
2 below the line on Government Exhibit 655?

3 A. Yes.

4 Q. And during the call, did you go through the information  
5 about the banks that are above the line on Government Exhibit  
6 655?

7 A. Yes.

8 MS. KRAMER: Can you go back to the document,  
9 Mr. Urbanczyk.

10 Q. So the information about the banks above the line, you went  
11 through that as well?

12 A. Yes.

13 Q. Do you remember whether this was a short call or a long  
14 call?

15 A. It was a fairly long call.

16 Q. Based on what Dave Middendorf said during the call, did you  
17 have an understanding of what his reaction was to getting this  
18 information?

19 A. Yes.

20 Q. What was your understanding?

21 A. It was, again, very pleased to have had this information.

22 Q. What, if anything, did you say on the call about whether  
23 you had asked for this information?

24 A. Yeah. I remember telling them, both Tom and Dave  
25 Middendorf, that I wanted them to know that I had not solicited

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Sweet - direct

1 this information and that I didn't ask for it and that I didn't  
2 know what to do with it.

3 Q. Why did you tell them that?

4 A. I knew that this information felt just different to me than  
5 the previous lists, because this was a final set of the PCAOB's  
6 inspection targets for 2017, and with a few exceptions, these  
7 were all still live audits. Whereas the March listing, those  
8 were audits that had already at least had their opinion  
9 finalized and they were within that 45-day documentation date  
10 and the information that I shared in 2015, I understood all of  
11 those to be finalized audits and all the documentation  
12 completed. And so I just -- I wasn't sure -- I didn't quite  
13 know how they were going to react. I was a little nervous  
14 about this information.

15 Q. How did Dave Middendorf respond to you saying that?

16 MS. LESTER: Objection. Asked and answered.

17 THE COURT: Overruled.

18 A. Dave -- after I having expressed -- after I said I didn't  
19 know what to do with this, Dave Middendorf responded by saying,  
20 Hey, Brian, this is information that's too good not to use.

21 Q. What, if anything, did you say during the call about the  
22 conversations that you had already had with Paul Tupper and  
23 Diana Kunz?

24 A. We went through the list a second time on the call. And  
25 during the second time we focused in on who the particular

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Sweet - direct

1 partners were. And so when we got to like CitiGroup, I said,  
2 Hey, I had already given Paul Tupper a heads up. And with  
3 Diana, the same thing, I had given Diana a heads up.

4 Q. What, if anything, was the plan that came out of the  
5 February 6th call?

6 A. There were a couple of other banks that were on there  
7 where, you know, the instruction or what we had talked about  
8 was to, you know, speak -- for me to speak to a couple of the  
9 banking partners and notify them. And I remember kind of at  
10 the end of the call Tom and Dave saying: OK. Hey, Brian,  
11 we'll go and figure this out and figure out what to do with  
12 this and, you know, we'll kind of let you know.

13 Q. Do you remember any of the specific engagements that were  
14 discussed on the February 6th call?

15 A. Yes.

16 Q. Which ones do you remember specifically being discussed in  
17 terms of future action at that time?

18 A. So, for First Bancorp, I remember Tom telling me, Hey,  
19 Brian, give Lucette Negron a heads up. And when do you, remind  
20 her that First Bancorp had been scheduled for inspection by the  
21 PCAOB in 2016 but they had canceled it because of the Zika  
22 virus. That is that Puerto Rico bank.

23 And with Joe Gencarella, he was the audit partner on  
24 Brookline Bancorp, and he was the one who had been a partner in  
25 2016 and had been subject to both NewStar and Century that were

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1 both clean inspections and so they canceled that third one.

2 And so he said, Hey, Brian, when you give Joe a heads up, make  
3 sure you tell him about this other partner in the banking  
4 practice that had been inspected two times the same year by the  
5 PCAOB, had clean inspections, and the PCAOB still picked them  
6 again the following year. So that I was to, you know,  
7 characterize, Hey, good likelihood of getting picked and here's  
8 the way -- you know, here's how to say it.

9 Q. When you were given those instructions, was Dave Middendorf  
10 still on the call?

11 A. Yes.

12 Q. Did he say anything about that?

13 A. No, I don't remember him saying anything specific about  
14 those two.

15 Q. Did he interject at any point and tell you not to reach out  
16 to those people?

17 A. No.

18 Q. What, if anything, was discussed on the February 6th call  
19 about Macy\*s?

20 A. We discussed again the fact that it was on the list. We  
21 discussed the specific focus areas, and again kind of  
22 reaffirmed that Joe Lynch was going to be engaged once he had  
23 finished supporting on the CitiGroup audit to go out and help.

24 Q. Let's look again at Government Exhibit 655.

25 You testified earlier about a couple of items on the

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1 list that had question marks.

2 So on the left side, FDL and FNGN, were those  
3 discussed at all on the February 6th call?

4 A. Yes.

5 Q. What was said about them?

6 A. I remember telling them that these were the ticker symbols  
7 that we had received and that it looked like those were those  
8 issuers but that I couldn't match it up to the data request.  
9 And I remember Tom Whittle saying, Hey, can you go back to, you  
10 know, the colleague and check on those, confirm those?

11 And I remember Dave Middendorf saying, Nope, you don't  
12 need to do that. Don't worry about it, Brian. I've got access  
13 to the firm's system of clients. I'll check on those, you  
14 know, myself.

15 Q. All right. At any point in the call, did anyone say  
16 anything about being uncomfortable with this information?

17 A. I indicated I was uncomfortable with this information.

18 Q. Did anyone else say anything about that?

19 A. No.

20 Q. Did anyone on the call say anything about not wanting to  
21 have this information?

22 A. No.

23 Q. Over the next day or two, what steps, if any, did you take?

24 A. I remember speaking with Paul Tupper, Joe Gencarella,  
25 Lucette Negron, talked -- spoke with, you know, Cindy,

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1 debriefed with her about the call, talked to another, you know,  
2 managing director who was working out at Citi with me.

3 Q. Did there come a time that you took a photo of the list  
4 that you had written down on the manila folder?

5 A. Yes.

6 Q. Why did you take a picture of it?

7 A. I remember being with Paul Tupper, who was the lead audit  
8 partner on Citi. And after confirming to him that Citi was  
9 going to get picked, he -- he said, Hey, Brian, I've got this  
10 other small banking engagement that I work on. Do you happen  
11 to know if they're going to get picked?

12 And I didn't have the list with me. I remember  
13 saying, OK, let me go check, Paul, and come back to you. And  
14 I remember after that thinking I have to take a picture of this  
15 so that I have the information handy on my phone in case other  
16 questions like that come up from other people.

17 Q. Do you remember approximately when you took that picture of  
18 the list?

19 A. I know it was sometime after February 6th but I don't know  
20 the date.

21 Q. On February 8th, did there come a time that you had a call  
22 with Tom Whittle?

23 A. Yes.

24 Q. What happened in that call?

25 A. Tom Whittle called me and said, Hey, did you tell Diana we



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Sweet - direct

1 had the list?

2 And I remember lying and saying, No, I didn't tell her  
3 we had a list.

4 And he said, Well, did Cindy Holder tell her?

5 And I said, I don't think so.

6 Then he said -- I remember him saying, Well, she  
7 knows.

8 Q. And in reference to "Diana," who did you understand him to  
9 mean?

10 A. He was referring to Diana Kunz, who was the partner on  
11 Chemical that I had spoken with on that Friday.

12 Q. Why did you tell Tom Whittle that you hadn't told Diana?

13 A. Because I was scared. I knew that Tom would be angry with  
14 me for having told Diana really the truth about this list and  
15 knowing that it had come from the PCAOB versus, you know, using  
16 some other kind of made-up story about why we thought it might  
17 have a high chance of getting picked. And, you know, Tom was  
18 the one who had mentioned the circle of trust, you know, in the  
19 first instance in March of 2016, and I was clearly violating  
20 the circle of trust by telling her the way I did.

21 Q. What did Tom Whittle say next?

22 A. I remember him saying that Diana had reported it up to the  
23 leadership in our office and that I think it had gone to one of  
24 the firm's regional risk management partners, and I remember  
25 Tom saying, I don't know if we can stop this train.

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1 Q. What, if any, direction did he give you about further  
2 action on the list?

3 A. He told me to stand down and to not let anyone else know  
4 about the listing and to not do anything further with this, and  
5 asked me if -- asked me to tell Cindy Holder the same thing.

6 Q. Did there come a time when you learned that KPMG lawyers  
7 were investigating how the firm had gotten the February 2017  
8 PCAOB inspection list?

9 A. Yes.

10 Q. Do you remember approximately when you learned that?

11 A. I believe it was on February 14th, so about a  
12 week-and-a-half later.

13 Q. February 14, 2017?

14 A. Yes.

15 Q. How did you learn that there was an investigation?

16 A. I received a phone call from a partner in KPMG's Legal  
17 Department, their Office of General Counsel.

18 Q. Did you give him any substantive information in that first  
19 phone call?

20 A. No, I didn't.

21 Q. How did you leave things at the end of that call?

22 A. I told him that I had a client call coming up and that I  
23 didn't -- wouldn't have enough time to talk this through with  
24 him and that I need to take this client call and that I would  
25 call him right back.

J2kdmid5

Sweet - direct

1 Q. Did you actually have a client call?

2 A. Yeah, I did.

3 Q. Is that why you told him that you needed to call him back?

4 A. No.

5 Q. Why did you tell him you needed to call him back?

6 A. Because I was scared, didn't know what to do, and I wanted  
7 to figure out -- I wanted to talk to Tom, figure out what to  
8 do.

9 Q. What did you do next?

10 A. I don't remember if I first called Tom Whittle or Cindy  
11 Holder, but I remember speaking with Cindy and telling Cindy  
12 Holder, Hey, I just got this call from Mark Rubino at KPMG's  
13 internal counsel. You know, have you gotten one yet? I told  
14 her I was going to either try get Tom Whittle or that I had  
15 tried. And she said, yeah, yeah, definitely make sure you  
16 speak with Tom before you call Mark back. And then trying Tom  
17 a couple of times until I finally got him.

18 Q. Did you speak with Cindy Holder once or more than once that  
19 day?

20 A. More than once that day.

21 Q. Do you remember specifically what she said in each  
22 individual conversation?

23 A. Not in each one.

24 Q. Do you remember generally what she said in the  
25 conversations overall?

J2kdmid5

Sweet - direct

1 A. Yes.

2 Q. What did she say?

3 A. I remember her telling me that when KPMG's kind of internal  
4 legal counsel called her to ask her about it, that she was just  
5 going to say that she had received this list of ticker symbols  
6 anonymously in the mail and that she was going to never -- or  
7 not tell them about Jeff Wada and that Jeff Wada had been the  
8 source of this information.

9 Q. When she said that she was not going to tell them that Jeff  
10 Wada had been the source of the information, what did you  
11 understand her to mean?

12 A. That she was going to deny knowing who the information had  
13 come from at the PCAOB and was going to lie about it really  
14 coming from Jeff Wada.

15 Q. Did you have any understanding about whether or not Cindy  
16 Holder had told Jeff Wada that you knew that he was the source?

17 A. Yes.

18 Q. What was your understanding about that?

19 MR. COOK: Objection. Foundation.

20 THE COURT: Sustained.

21 BY MS. KRAMER:

22 Q. Where did you get that understanding?

23 A. It was -- my understanding was that --

24 Q. Let me just stop you.

25 Without saying what your understanding was on the

J2kdmid5

Sweet - direct

1 subject, could you explain first how you came to have an  
2 understanding about whether Cindy Holder had told Jeff Wada  
3 that you knew that he was the source?

4 A. Cindy and I had talked about Jeff Wada multiple times from  
5 2015, 2016, 2017, I mean in every instance that he had provided  
6 this information, and in those conversations it was clear to me  
7 that Cindy had told him that her next step after getting this  
8 was going to be to call me. It was also very clear to me, even  
9 thinking back to the January 9th listing, because Cindy had  
10 told me that preliminary listing had come from Jeff Wada and  
11 then hours later had forwarded me Jeff Wada's résumé with the  
12 expectation that I was going to review that résumé and then  
13 return it back with comments to Jeff Wada.

14 There were also other text messages that Cindy and I  
15 had exchanged back and forth going back, you know, especially  
16 in 2016, where I remember telling Cindy things like, you know,  
17 after finding out that KPMG Japan's inspection was clean,  
18 saying make sure you tell Jeff Wada that, you know, something  
19 like I think he's the freaking man or, you know, tell him that  
20 next time he's in New York, you know, we've got to go get a  
21 beer together or beers together, beers are on me.

22 Q. So based on this communication --

23 MR. COOK: Your Honor, I object to the narrative  
24 summation he just gave and move to strike everything after his  
25 statement that I believe his words were -- my realtime stopped.

J2kdmid5

Sweet - direct

1 His words were to the effect of "my understanding." It is  
2 clear his testimony is based on inferences and speculation and  
3 not anything other than that.

4 THE COURT: I think he testified to the bases for his  
5 understanding. I am not going to strike it.

6 BY MS. KRAMER:

7 Q. So what was your understanding about whether he knew that  
8 Cindy Holder was telling you that he was the source?

9 A. That he knew that I knew.

10 Q. All right. So when -- at the time that you and Cindy  
11 Holder spoke on February 14, 2017, at that point did you have  
12 an understanding about whether the investigation was into the  
13 2017 list alone or also the earlier lists?

14 A. Only the 2017 list.

15 Q. How did you respond to Cindy Holder telling you that she  
16 wanted to protect Jeff Wada as the source?

17 A. I told Cindy that -- that I would do the same, that at that  
18 point we had only been referring to Jeff Wada as a former  
19 colleague and that really only Cindy and I knew who the real  
20 person was at the PCAOB providing this.

21 Q. Did there come a time that day that that you spoke with Tom  
22 Whittle?

23 A. Yes.

24 Q. And what was said in that conversation?

25 A. I remember telling Tom that I had just received a call from

J2kdmid5

Sweet - direct

1 Mark Rubino, who was KPMG's internal counsel, and that I didn't  
2 know what to do. And Tom said -- I remember Tom saying, Well,  
3 I guess I'm going to get the next call.

4 And I said, OK, Tom, I'm really sorry.

5 And he said -- and I said, I'll call you back after I  
6 speak with Mark Rubino.

7 And he said, Well, I don't think you're going to be  
8 able to.

9 Q. Did you speak with Mark Rubino, counsel for KPMG, again  
10 that day?

11 A. Yes, I did.

12 Q. Did you understand the fact that he was calling you and  
13 asking you questions was serious?

14 A. Yes, I did.

15 Q. Did you tell him the truth or did you lie?

16 A. I lied to him.

17 Q. What did you lie about?

18 A. I told him that I didn't know who this information had come  
19 from at the PCAOB, which was a lie. I told him that Cindy had  
20 just -- had told me it was received anonymously in the mail,  
21 which I knew to be a lie, right. I also did not mention to him  
22 that the same thing had occurred in March of 2016 or in January  
23 of 2017 or the other instances where other information had come  
24 from Jeff Wada. And I lied about -- I also lied about the list  
25 itself.

J2kdmid5

Sweet - direct

1 Q. What did you tell him about the list?

2 A. He asked me if I still have the list, and I told him I did.

3 He said, OK, I want you to, you know, scan it and send  
4 it to me so I could see it.

5 And I said, OK, I'll do that after the call.

6 And I looked at the list and realized that if I sent  
7 him the real version of the list, my real notes, that it would  
8 be clear that it was -- it was inconsistent with the lie of  
9 just having received a list anonymously in the mail from Cindy  
10 because it had all of this other information on it on focus  
11 areas and partners and, you know, there were severe offenders,  
12 and so I recreated a fake copy of the list and only wrote down  
13 basically the ticker symbols, which I knew was a lie.

14 Q. Why did you lie to Mark Rubino that day?

15 A. I was scared about losing my job. I didn't want to get  
16 caught.

17 Q. Did you know that what you had done was wrong?

18 A. Oh, yeah.

19 Q. Did you understand that what you had done had an improper  
20 purpose?

21 A. Yes.

22 Q. Let's take a look at what's marked for identification as  
23 Government Exhibit 650.

24 Do you recognize this exhibit?

25 A. Yes.



J2kdmid5

Sweet - direct

1 Q. How do you recognize it?

2 A. I recognize this as the -- this is my handwriting. This is  
3 the fake copy of the list that I created after that call with  
4 Mark and scanned and sent to him.

5 MS. KRAMER: The government offers Government Exhibit  
6 650.

7 THE COURT: Received.

8 (Government's Exhibit 650 received in evidence)

9 BY MS. KRAMER:

10 Q. All right. Let's put 650 side-by-side with 655.

11 So, to be clear, what is the list on the left,  
12 Government Exhibit 650? Is that the fake list or the real  
13 list?

14 A. That is the fake list.

15 Q. And Government Exhibit 655, on the right, is that the fake  
16 list or the real list?

17 A. The one on the right is the real list.

18 Q. It looks like from the edges that Government Exhibit 650 is  
19 written on a manila folder, is that correct?

20 A. Yes.

21 Q. Why did you write the fake list on a manila folder?

22 A. Because I had written the original list on a manila folder,  
23 I decided to do the same thing with the fake list I created.

24 Q. OK. And was your decision not to copy down onto the fake  
25 list Government Exhibit 650 all of the information on the real

J2kdmid5

Sweet - direct

1 list, Government Exhibit 655, was that a deliberate decision?

2 A. Yes.

3 Q. Why did you make that decision?

4 A. Because I knew that by copying all the information down,  
5 that it would be inconsistent with this lie that I had just  
6 told him about Cindy having received it in the mail from an  
7 anonymous person.

8 Q. And to be clear, what was the lie that you passed along  
9 about what Cindy Holder had received in the mail?

10 A. She had told me that she was going to say that she had just  
11 received a listing of ticker symbols anonymously in the mail  
12 that she had recognized to be KPMG audit clients and that she  
13 was going to say there had been no return address on there so  
14 she couldn't tell who it had been sent from, and that if Mark  
15 Rubino was going to ask her, that she would just say, well,  
16 lots of people at the PCAOB had her home address because she  
17 sent Christmas cards to people.

18 Q. How did you get this fake list, Government Exhibit 650, to  
19 Mark Rubino on February 14th?

20 A. I scanned it on my home scanner/printer and then emailed it  
21 to Mark Rubino.

22 Q. Is Government Exhibit 655, the real list, is that a  
23 photograph or a photocopy?

24 A. That is the photograph that I took of my list.

25 Q. And who took that photo?

J2kdmid5

Sweet - direct

1 A. I took the photo.

2 Q. Do you still have the original manila folder with your  
3 handwritten notes of the 2017 lists from both January and  
4 February that's Government Exhibit 655?

5 A. No, I do not.

6 Q. Where is that document?

7 A. Later that day after the call with Mark Rubino, I took the  
8 original document and I burned it in my home barbecue.

9 Q. In the barbecue grill in your backyard?

10 A. Yes.

11 Q. Did you destroy anything else in your barbecue that day?

12 A. No, I did not.

13 Q. Why did you burn the real 2017 list in your backyard  
14 barbecue in February of 2017?

15 A. I was trying to cover my tracks.

16 Q. And what, if anything, did you do with the picture on your  
17 phone of the February 2017 list, Government Exhibit 655?

18 A. I deleted it from my phone.

19 (Continued on next page)

20

21

22

23

24

25

J2K5mid6

Sweet - direct

1 BY MS. KRAMER:

2 Q. Why did you delete it?

3 A. Again, another way to cover my tracks.

4 Q. Do you now understand that the photograph of the real list  
5 was recovered from your phone?

6 A. Yes.

7 Q. Did there come a time that you told Cynthia Holder that you  
8 gave Marc Rubino the fake replica of the list?

9 A. Yes.

10 Q. Approximately when did you tell her that?

11 A. This was after my second call with Mark Rubino on that day,  
12 February 14th.

13 Q. What was her reaction?

14 A. I remember she was mad at me. She called me stupid or an  
15 idiot or something like that, and said, Why didn't you say you  
16 threw it away, say you didn't have it?

17 Q. Did there come a time in February 2017 that you discussed  
18 with Cynthia Holder whether either of you had electronic  
19 documents that you had taken from the PCAOB?

20 A. Yes.

21 Q. How did that come up?

22 A. A few days -- I remember it was a few days after the  
23 initial phone call with Mark Rubino. Cindy called me and said,  
24 hey Brian, they're monitoring our e-mails and she referenced a  
25 specific e-mail that she had sent to me, and I remember then

J2K5mid6

Sweet - direct

1 starting to think or worry that if internal counsel was in fact  
2 monitoring my e-mails, and I knew I had all of this stolen  
3 PCAOB information, the stuff that I had taken with me when I  
4 left the PCAOB that I had copied onto my KPMG computer. And I  
5 remember telling Cindy that and her then saying, calling me an  
6 idiot, and saying that I shouldn't have done that and that she  
7 had been much, you know, smarter and never copied it off of her  
8 flash drive and that it was hidden somewhere where no one else  
9 could find it.

10 Q. Going back for a moment, did Cynthia Holder tell you why  
11 she thought that your e-mails were being monitored?

12 A. Yes.

13 Q. What did she tell you about that?

14 A. She said that Mark Rubino, in a call that he had had with  
15 her, had asked her about an e-mail with the subject line that  
16 said GEO risk, like G-E-O risk, and that Mark had asked her  
17 about what that meant. And it was an e-mail that Cindy had  
18 sent me and GEO probably looked like a ticker symbol but it was  
19 really a reference to one of the Citigroup memos that we were  
20 working on, a geographical risk assessment that we had been  
21 reviewing.

22 Q. Did there come a time that you were asked to provide phone  
23 records to KPMG counsel?

24 A. Yes.

25 Q. Were you and Cynthia Holder still in communication during

J2K5mid6

Sweet - direct

1 that time?

2 A. Yes.

3 Q. What, if anything, did you and Cindy Holder discuss  
4 concerning the fact that you had received a request for phone  
5 records?

6 A. That because Cindy and I had been asked if we would give to  
7 KPMG counsel or phone records that Cindy and I did not want to  
8 have this -- this long exchange of calls back and forth that  
9 would coincide with each of the internal counsel's calls to us,  
10 and so we devised a plan to try and communicate in other ways  
11 to avoid detection.

12 Q. What were those other ways that you talked to Cindy Holder  
13 about using to avoid detection?

14 A. Cindy suggested that we get burner phones. Cindy and I  
15 talked about using Instagram as a code that if either of us  
16 posted a picture, like a direct message in Instagram of a  
17 college football team picture, that that would be a code to  
18 then dial into a conference call number. I also gave her -- I  
19 think I gave her my spouse's phone number and she gave me her  
20 spouse's phone number so that we could try and communicate with  
21 each other that way.

22 Q. Did you ever follow up on Cindy Holder's suggestion that  
23 you get burner phones?

24 A. I did not get a burner phone, but I understand that Cindy  
25 did and she gave me the number for it.

J2K5mid6

Sweet - direct

1 Q. What do you understand a burner phone to be?

2 A. I understand a burner phone to just be a phone that  
3 couldn't be traced back, the phone number can't be traced back  
4 like a prepaid phone or something like that.

5 Q. And, did you ever communicate with Cindy Holder through  
6 these different means to avoid detection?

7 A. Yes.

8 Q. Did you ever speak with her from a phone other than your  
9 phone or your spouse's phone?

10 A. Yes.

11 Q. And was the decision to call her from other numbers not  
12 your own cell phone, deliberate?

13 A. Yes.

14 Q. Why did you do that?

15 A. To try and conceal the fact that she and I were speaking.

16 Q. During any of your conversations with Cindy Holder during  
17 this time period, did you discuss how to handle questions from  
18 KPMG counsel?

19 A. Yes.

20 Q. What did she say about that?

21 A. Cindy, because she had, she told me that -- well, she told  
22 me that because she had previously worked in law enforcement  
23 that she knew how to handle interviews. And she told me that,  
24 you know, what I needed to do was take control of the  
25 conversation and don't get, you know, suckered in, basically,

J2K5mid6

Sweet - direct

1 to you know, long pause. In other words, if they ask me a  
2 question or said something and there was a long pause, that she  
3 said she was the one who had invented the long pause and she  
4 knew how to deal with that and I needed to be smarter when I  
5 was talking to internal counsel Mark Rubino.

6 Q. And, in any of your conversations in February 2017 was  
7 Cindy Holder, did she report back to you about conversations  
8 she had had with Jeffrey Wada?

9 A. Yes.

10 Q. What did she tell you about that?

11 A. She told me that she had given or told Jeff that she and I  
12 had both been contacted about the internal investigation and  
13 she had assured Jeff that she would not tell KPMG's internal  
14 lawyer that either she or I knew that Jeff Wada was the person.  
15 I remember her telling me as well that the text message or that  
16 the grocery list indication, referring to this March -- sorry,  
17 the February 2017 list being your grocery list is ready that  
18 she was just going to be able to explain that away as she was  
19 going to buy Jeff groceries.

20 Q. Did there come a time that you were interviewed by a law  
21 firm in connection with KPMG's internal investigation?

22 A. Yes.

23 Q. Approximately when was that?

24 A. I don't remember the first date but I believe it was in  
25 March of 2017.



J2K5mid6

Sweet - direct

1 Q. Did you participate in one interview or in more than one  
2 interview?

3 A. It was more than one interview.

4 Q. Were you truthful in those interviews or did you tell lies?

5 A. I told lies.

6 Q. What kinds of lies did you tell in those interviews?

7 A. I lied about not knowing -- not knowing who the original  
8 source was, that Jeff Wada was the person at PCAOB.

9 Actually, I take that back. I think at that point  
10 I -- no, I'm sorry. At that point I -- at that point I had  
11 told them that it was Jeff Wada. Excuse me.

12 I lied about the different people that I knew I had  
13 brought into the circle of trust trying to say that it was  
14 limited. I generally lied about my involvement in this trying  
15 to shift blame to other people by saying, well, I was really  
16 only the middleman and that Cindy was the one who was getting  
17 this and once she told me, I immediately passed it on trying to  
18 deflect blame wherever I could and generally told lies to try  
19 and minimize my involvement in this, make myself look as good  
20 as possible.

21 Q. Why did you lie in those interviews?

22 A. I was scared. I was completely embarrassed and ashamed for  
23 having had a role in this. I wasn't sure if I was going to  
24 keep my job or not.

25 Q. Going back for just a moment to the conversations that you

J2K5mid6

Sweet - direct

1 had with Cindy Holder during the investigation, did there ever  
2 come a time that she talked to you about Jeff Wada's access to  
3 the IIS system?

4 A. Yes.

5 Q. What did she say about that?

6 A. She told me that Jeff was going to be able to explain that  
7 he had had access to this, the KPMG's IIS system, it was kind  
8 of restricted access. Because of a role that he had on the  
9 firm that he was primarily assigned to at the PCAOB and that  
10 because of that role, it required him to be aware of what other  
11 schedules existed so that he could coordinate loaner resources  
12 or temp resources as the PCAOB shared staff from one team to  
13 another.

14 MS. KRAMER: May I have just one moment, your Honor?

15 THE COURT: Yes.

16 (Counsel conferring)

17 BY MS. KRAMER:

18 Q. Mr. Sweet, you testified I think yesterday that you pled  
19 guilty to conspiring to defraud the SEC and the PCAOB. Did you  
20 plead guilty pursuant to a cooperation agreement with the  
21 government?

22 A. Yes.

23 Q. Approximately when did you begin meeting with the  
24 government in an effort to cooperate?

25 A. In July -- on or around July of 2017.

J2K5mid6

Sweet - direct

1 Q. At that point had you been charged with any crimes?

2 A. No, I had not.

3 Q. Approximately how many times have you met with the  
4 government, both before pleading guilty and in preparation for  
5 this trial?

6 A. I don't know the exact number but more than a dozen, I  
7 believe.

8 Q. When is the most recent meeting you had with the  
9 government?

10 A. Last night.

11 Q. And in your meetings with the government in preparation for  
12 trial, were you ever shown any text messages between Cindy  
13 Holder and Jeff Wada?

14 A. No.

15 Q. In your meetings with the government to prepare for trial,  
16 did you ever listen to any voice mails from Jeff Wada?

17 A. No.

18 Q. Have you told the government about your role in stealing,  
19 sharing, and using confidential PCAOB inspection lists?

20 A. Yes.

21 Q. Have you told the government about other individuals  
22 involved in this scheme?

23 A. Yes.

24 Q. Is this the only unlawful conduct you have engaged in?

25 A. No.

J2K5mid6

Sweet - direct

1 Q. Did you obtain a mortgage for the home you lived in from  
2 approximately 2011 through 2014?

3 A. Yes.

4 Q. In approximately what year did you get that mortgage?

5 A. In 2011.

6 Q. Were you working at the PCAOB at the time?

7 A. Yes.

8 Q. When you applied for that mortgage, did you tell lies to  
9 the lender?

10 A. Yes.

11 Q. Did you tell one lie or more than one lie?

12 A. I told more than one lie.

13 Q. What did you tell lies about?

14 A. I lied about an investment account that was my father's  
15 that I represented was my own. I lied about my income; that I  
16 had received a W-2 form from PwC, which was my prior employer  
17 before the PCAOB, and I told the lender that that W-2 was  
18 because of ongoing consulting work that I was doing for PwC  
19 because of this audit specialist skill set I had when I knew  
20 that was a lie, it was only for expense reimbursement. And, I  
21 also lied about a gift that I had said had come from my  
22 father-in-law but was really a separate loan that I had taken  
23 in order to have enough money for the downpayment.

24 Q. Did you cause any documents to be sent to the lender in  
25 connection with that purported loan from your father-in-law?

J2K5mid6

Sweet - direct

1 A. Yes.

2 Q. What kind of document did you cause to be sent to the  
3 lender?

4 A. Filled out a gift letter that characterized this money from  
5 my father-in-law as a gift when in fact it was not.

6 Q. Did you ask your father-in-law to sign the letter?

7 A. Yes.

8 Q. Did you ask your wife to sign the letter?

9 A. Yes.

10 Q. Did you know at the time that you did that that it  
11 contained false statements?

12 A. Yes.

13 Q. Turning to the money that you got from PwC, what did you  
14 claim that money was for?

15 A. I claimed that it was for consulting work that I had been  
16 doing for PwC.

17 Q. Was that the truth or a lie?

18 A. It was a lie.

19 Q. What was it actually for?

20 A. It was for expense reimbursement. I think it was tax  
21 reimbursement.

22 Q. Would the PCAOB have permitted you to work as a consultant  
23 for PwC while you were working there?

24 A. No.

25 Q. Did you prepare any documents in connection with that lie?

J2K5mid6

Sweet - direct

1 A. Yes.

2 Q. What kind of document did you prepare?

3 A. I wrote a letter to the lender explaining that, or lying  
4 about the nature of this, this W-2 income that mischaracterized  
5 or that lied entirely about what it really was.

6 Q. What did the letter say about your expertise in accounting?

7 A. It said that I was earning this income because of this  
8 accounting and auditing specialist skill set I had.

9 Q. And what did the letter say about whether you are expected  
10 to continue earning such money?

11 A. It said -- I believe it said that I was likely going to  
12 continue earning similar money like that.

13 Q. And, was all of that a lie?

14 A. Yes.

15 Q. Who sent that letter in to the lender?

16 A. I did.

17 Q. From where?

18 A. From my, I believe it was my PCAOB computer.

19 Q. After telling those lies to the lender, did you get the  
20 mortgage?

21 A. Yes.

22 Q. Did you pay off that mortgage?

23 A. Yes.

24 Q. Have you ever told that lender that you had lied to get the  
25 mortgage?

J2K5mid6

Sweet - direct

1 A. No.

2 Q. Did you purchase a vacation home in 2016?

3 A. Yes.

4 Q. Where?

5 A. In Shaver Lake, California.

6 Q. Do you still own that vacation home?

7 A. No.

8 Q. Approximately when did you sell it?

9 A. In late 2017.

10 Q. Right before buying that vacation home, did you have  
11 another property that you sold?

12 A. Yes.

13 Q. What kind of property?

14 A. It was a rental property.

15 Q. What kind?

16 A. A four-unit apartment.

17 Q. And in what year did you sell it?

18 A. 2015.

19 Q. When you filed your taxes for 2015, did you report the sale  
20 of that apartment building?

21 A. I reported the sale but did not pay any gains or taxes on  
22 the gains from the sale.

23 Q. What did you do in your taxes to prevent you from having to  
24 pay taxes on the gains for the sale?

25 A. I classified the sale as, under the IRS rules, as a 1031

J2K5mid6

Sweet - direct

1 exchange.

2 Q. What does that mean?

3 A. It basically means that when you sell something and then  
4 buy a similar asset, that you can defer paying any taxes on any  
5 gains because you are rolling it into the new property.

6 Q. And what was the new property that you claimed you were  
7 rolling the rental apartment building into?

8 A. A vacation home, a cabin.

9 Q. What effect did that have on the amount of taxes that you  
10 had to pay with your 2015 income tax returns?

11 A. It lowered the amount of taxes that I had to pay.

12 Q. By how much?

13 A. I don't know the exact number but by quite a bit. I would  
14 estimate at least \$30,000.

15 Q. Did you ever list the vacation home on a website for rent?

16 A. No.

17 Q. Did you ever rent out the vacation home for profit?

18 A. No.

19 Q. Was there ever a time that you planned to rent out the  
20 vacation home?

21 A. Yes.

22 Q. When did you abandon that plan?

23 A. In the middle of 2016 sometime.

24 Q. And when did you file your 2015 taxes?

25 A. In October of 2016.



J2K5mid6

Sweet - direct

1 Q. So, after you abandoned the plan for renting it?

2 A. Yes.

3 Q. And in those taxes you claimed the 1031 exchange?

4 A. Yes.

5 Q. And that was a lie?

6 A. Yes.

7 Q. Who prepared your 2015 taxes?

8 A. KPMG.

9 Q. Did you tell your tax preparer that the vacation home was a  
10 rental property?

11 A. Yes.

12 Q. And at the time you filed your taxes, did you sign them?

13 A. Yes.

14 Q. Did you understand them to contain false statements?

15 A. Yes.

16 Q. Did you intentionally sign false tax returns?

17 A. Yes.

18 Q. Why did you do that?

19 A. To avoid paying taxes.

20 Q. In addition to those returns being filed with the federal  
21 government, were they also filed with the State of California?

22 A. Yes.

23 Q. Who prepared your taxes for 2016?

24 A. KPMG.

25 Q. Did you provide that tax preparer with information about

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Sweet - direct

1 the vacation home?

2 A. Yes.

3 Q. Did you lie to the tax preparer?

4 A. Yes.

5 Q. How did you lie to the tax preparer for your 2016 taxes?

6 A. I told them that the vacation home was really a rental  
7 property when I knew it was not. I told the tax preparer that  
8 I had rented it out for days when I knew I had not. I lied to  
9 the tax preparer about income that I had not actually earned  
10 for this cabin and as a result was able to then take all of the  
11 expenses for the cabin and use it to decrease the amount of  
12 tax. I took a loss on the property to offset my taxes.

13 Q. Had you in fact collected rental income for any days on the  
14 cabin in 2016?

15 A. No.

16 Q. Do you remember how much rental income you claimed you  
17 received on that home in 2016?

18 A. I don't remember the exact number but it was about \$10,000,  
19 I believe.

20 Q. And, was that a lie?

21 A. Yes.

22 Q. Did you sign the tax returns that contained that false  
23 information?

24 A. Yes.

25 Q. Did you know that you were signing false tax returns?

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1 A. Yes.

2 Q. And, were those returns also filed with the State of  
3 California?

4 A. Yes.

5 Q. Did your 2017 tax returns contain similar lies about income  
6 that you hadn't collected and expenses for that vacation home?

7 A. Yes.

8 Q. When did you file your 2017 tax returns?

9 A. In October of 2018.

10 Q. Had you already signed a cooperation agreement with the  
11 government in this case by that time?

12 A. Yes, I had.

13 Q. Did you understand that the cooperation agreement  
14 prohibited you from filing false tax returns?

15 A. Yes.

16 Q. Why did you include those lies on your 2017 tax returns?

17 A. I was worried that, by having not revealed this lie to the  
18 government during my initial meetings with them, that I was  
19 violating the cooperation agreement and was scared about losing  
20 it, and thought that I could just fix this later when I refiled  
21 all my other past returns that I knew had errors and lies in  
22 them.

23 Q. When did it first occur to you that you should have told  
24 the government about the lies about your vacation home on your  
25 tax returns?

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1 A. When I started filling out my 2017 returns in or around  
2 March.

3 Q. And why didn't you tell the prosecutors then?

4 A. Because I was worried that by, if I told them then it was  
5 after I signed the original cooperation agreement, that it  
6 would indicate that I had not -- I should have told them this  
7 earlier.

8 Q. So, did you tell the same lies on your 2017 taxes after  
9 realizing it was wrong?

10 A. Yes.

11 Q. Why?

12 A. Because I thought that I could just fix it later without  
13 anyone knowing about it.

14 Q. And, what did you think the consequence would be of telling  
15 the prosecutors that you had not previously told them about  
16 this in connection with your 2016 tax returns?

17 A. I thought they would be mad at me for not having told them  
18 this earlier.

19 Q. On the topic of the lies that you told to obtain your  
20 mortgage on a home that you lived in from 2011 to 2014, when  
21 did you disclose that to the government?

22 A. In December or around December of 2017.

23 Q. Why didn't you disclose that to the government in any of  
24 your earlier meetings?

25 A. I hadn't thought of it.

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1 Q. What caused you to remember that in December 2018?

2 A. We, in response to questions about properties that I had  
3 purchased, I went through a process of looking through my old  
4 files on this hard driver and I identified it then.

5 Q. And on the topic of the lies you told to the IRS about your  
6 vacation home and the expenses, when did you disclose that to  
7 the government?

8 A. Beginning in December of 2018 but not completely until  
9 February of 2019.

10 Q. Have your tax returns contained other false or inaccurate  
11 information aside from what you have already testified about?

12 A. Yes.

13 Q. What kind of false or inaccurate information have your tax  
14 returns contained?

15 A. They included overstatement of charitable deductions;  
16 overstatement of expenses related to business, you know,  
17 apartments and apartment expenses and others; taking advantage  
18 of credits that I didn't really qualify for; and in connection  
19 with the apartments, that my wife was a real estate  
20 professional.

21 Q. Can you give an example of a personal expense that you  
22 claimed as a business expense?

23 A. Like, if we had bought something, home repair supplies at  
24 Home Depot, like paint that we were going to use for my  
25 personal home, that I would have then characterized that as an

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1 apartment expense, work we would do at our apartment when it  
2 was really for our home.

3 Q. For approximately what tax years did you tell those kinds  
4 of lies on your tax returns, overstating the deductions, taking  
5 credits, and in connection with charitable deductions?

6 A. 2012 through 2017.

7 Q. And you mentioned claiming that your wife was a real estate  
8 professional. For what years have your tax returns claimed  
9 that your wife is a real estate professional?

10 A. I don't remember the first year but at least through, at  
11 least through 2012 through 2017.

12 Q. What effect has that had on your tax exposure?

13 A. Characterizing my wife as a real estate professional means  
14 that losses that we earn or that we incur on any rental  
15 properties that we have owned and do own can be used to then  
16 offset my income, so it has the effect of us paying less taxes.

17 Q. Has your wife actually managed rental properties that you  
18 have owned during that time period?

19 A. Yes.

20 Q. Is there a requirement that she spend a certain number of  
21 hours per year managing rental properties to qualify for that  
22 real estate professional status?

23 A. Yes.

24 Q. What's that number of hours that's the minimum per year?

25 A. 750 hours.

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1 Q. And when you calculated those hours for your 2016 and 2017  
2 tax returns, did you include the hours that she spent on your  
3 vacation home that you falsely claimed was an investment  
4 property?

5 A. Yes.

6 Q. Do you know if without the hours that she spent on your  
7 vacation home, did she meet the 750-hour requirement?

8 A. No.

9 Q. And, what effect did claiming her as a real estate  
10 professional have on your reporting of your vacation home as an  
11 investment property?

12 A. It allowed us to offset all of the expenses that we had on  
13 the vacation home and applied those against my income so that  
14 we would ultimately pay less taxes, lowered our adjusted gross  
15 income.

16 Q. When you left PwC in 2009 to go work for the PCAOB, did you  
17 take any PwC materials with you?

18 A. I did.

19 Q. What did you take?

20 A. I took other confidential information from PwC.

21 Q. Did you understand that you were not allowed to take  
22 confidential information from PwC?

23 A. Yes.

24 Q. And, what did you use to take the confidential information  
25 from PwC?

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1 A. I used the same hard drive that I used when I took that  
2 confidential information from the PCAOB.

3 Q. When you graduated from college in 2000, did you graduate  
4 with honors?

5 A. Yes, I did.

6 Q. What kind?

7 A. I graduated *cum laude*.

8 Q. What does that mean?

9 A. Means I had a grade point average between 3.4 and 3.6.

10 Q. Did you ever claim that you graduated *magna cum laude*?

11 A. Yes, I did.

12 Q. Is that higher honor than what you earned?

13 A. Yes.

14 Q. In what context did you claim that you graduated with  
15 higher honors?

16 A. I used it in like a biography of myself, a profile of  
17 myself, and on a résumé.

18 Q. Do you know approximately what years you did that?

19 A. I don't know the first time that I put it on but I had it  
20 on there between 2005 or '06 and 2009.

21 Q. Turning back to the cooperation agreement, before you  
22 signed that agreement did you review it with your attorneys?

23 A. Yes, I did.

24 Q. Take a look at what's marked for identification as  
25 Government Exhibit 1450 and, Mr. Urbanczyk, if you can flip



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1 through to the last page, please?

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. How do you recognize it?

5 A. I recognize my signature on this document and this to be  
6 the cooperation agreement that I signed.

7 MS. KRAMER: The government offers Government Exhibit  
8 1450.

9 THE COURT: 1450 is received.

10 (Government's Exhibit 1450 received in evidence)

11 BY MS. KRAMER:

12 Q. Did you sign any supplemental agreements to your  
13 cooperation agreement with the government?

14 A. Yes.

15 Q. I am showing you what's been marked for identification as  
16 Government Exhibit 3522-36. What is the date of this  
17 supplemental agreement?

18 A. February 10th, 2019.

19 Q. Take a look at the first and second page; do you recognize  
20 this document?

21 A. Yes.

22 Q. How do you recognize it?

23 A. I recognize my signature.

24 Q. And what do you recognize this to be?

25 A. The supplement to the cooperation agreement.

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1 MS. KRAMER: The government offers Government Exhibit  
2 3522-36.

3 THE COURT: Received.

4 (Government's Exhibit 3522-36 received in evidence)

5 BY MS. KRAMER:

6 Q. What crimes did you plead guilty to pursuant to your  
7 cooperation agreement?

8 A. I pled guilty to both conspiracy to defraud the government  
9 and conspiracy to commit wire fraud.

10 Q. Why did you plead guilty to those crimes?

11 A. I pled guilty because I am guilty.

12 Q. And in connection with the wire fraud count, did you intend  
13 to steal the PCAOB's property in committing that crime?

14 A. Yes.

15 Q. Approximately when did you plead guilty?

16 A. In January -- excuse me. In January of 2018.

17 Q. After your guilty plea, did you continue to hold CPA  
18 licenses in Illinois, New York, and California?

19 A. No.

20 Q. Why not?

21 A. I resigned those licenses.

22 Q. What kinds of jobs have you had since leaving KPMG in 2017?

23 A. Accounting and audit-related jobs.

24 Q. Have you told those employers about your involvement in  
25 this case?

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Sweet - direct

1 A. Yes.

2 Q. Let's turn, for a moment, to when you entered your guilty  
3 plea. Did you appear in a courtroom in this district to plead  
4 guilty?

5 A. Yes.

6 Q. At the time that you entered your plea, were you asked  
7 questions about whether you understood at the time that what  
8 you were doing was unlawful?

9 A. Yes.

10 Q. How did you answer?

11 A. I answered that I didn't know it was unlawful at the time  
12 but that I knew it was wrong.

13 Q. And when you engaged in the conduct that led to your guilty  
14 plea, did you understand that you were committing federal  
15 felony crimes?

16 A. I didn't know at the time but I realize that now.

17 Q. Did you know you were violating a specific statute?

18 A. No.

19 Q. Did you know that what you were doing was wrong?

20 A. Yes.

21 Q. Did you have a wrongful purpose?

22 A. Yes.

23 MR. BOXER: Objection. Calls for a legal conclusion,  
24 your Honor.

25 MR. COOK: Join.

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Sweet - direct

1 THE COURT: Overruled.

2 BY MS. KRAMER:

3 Q. Have you been sentenced yet?

4 A. No, I have not.

5 Q. What is your understanding of the maximum sentence you face  
6 as a result of your guilty plea?

7 A. Up to 25 years in jail.

8 Q. And what's your understanding of your obligations under the  
9 cooperation agreement?

10 A. That I am obligated to appear, if asked to testify. That I  
11 am obligated to tell the truth completely and to the best of my  
12 ability. That I am obligated not to commit any more crimes. I  
13 am obligated to amend and refile my tax returns.

14 Q. What is your understanding of what you will receive in  
15 return from the government if you comply with the terms of your  
16 cooperation agreement?

17 A. If I comply with the agreement, that the government will  
18 write a letter that would be received by my sentencing judge to  
19 indicate whether or not I have complied with the cooperation  
20 agreement.

21 Q. And what is your understanding of who writes that letter?

22 A. The U.S. Attorney's office.

23 Q. What's your understanding of what type of information goes  
24 into that letter?

25 A. That letter will include all of the bad things that I have

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Sweet - direct

1 done and disclosed to the government, in connection with this  
2 case and the other crimes that I have told them about, and that  
3 it will also include any good things that the government knows  
4 about me.

5 Q. You testified previously about other unlawful and wrongful  
6 conduct you told the government in your meetings. What is your  
7 understanding about whether the letter will include that  
8 unlawful and wrongful conduct?

9 MR. COOK: Asked and answered.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: I know that the letter will include all  
13 of the wrongful conduct that I have done.

14 BY MS. KRAMER:

15 Q. What is your understanding about whether that letter will  
16 include what you told the government about the fact that you  
17 filed false tax returns after signing your cooperation  
18 agreement?

19 A. I know that will be included in the letter.

20 Q. What is your understanding about whether the cooperation  
21 agreement or the supplemental agreement you signed provides you  
22 with any protection from prosecution for tax crimes?

23 MR. COOK: Objection. Legal conclusion.

24 THE COURT: Overruled.

25 THE WITNESS: The cooperation agreement does not

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Sweet - direct

1 provide me with any protection from prosecution for the tax  
2 crimes that I have committed.

3 BY MS. KRAMER:

4 Q. What's your understanding of who receives the letter the  
5 government writes in connection with your sentencing?

6 A. The sentencing judge.

7 Q. And with that letter, what is your understanding of the  
8 lowest sentence you could get?

9 A. Time-served.

10 Q. And with that letter, what's your understanding of the  
11 highest sentence you could get?

12 A. 25 years in jail.

13 Q. Do you know what you will be sentenced to?

14 A. No, I do not.

15 Q. Were you promised any particular sentence or range of  
16 sentences?

17 A. No, I was not.

18 Q. What do you hope to be sentenced to?

19 A. Time-served.

20 Q. What's your understanding what happens if you don't tell  
21 the truth in this trial?

22 A. I know that I will be in violation of my cooperation  
23 agreement.

24 Q. And what's your understanding of what effect that has on  
25 whether you get that letter at sentencing?

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Sweet - direct

1 A. That I will not get that letter.

2 Q. Could you withdraw your guilty plea if that happened?

3 A. No, I cannot.

4 Q. What is your understanding of whether the jury verdict in  
5 this trial has any effect on whether or not you receive that  
6 letter?

7 A. The jury verdict in this trial has no effect on whether or  
8 not I have cooperated.

9 Q. What is your understanding of who decides your sentence?

10 A. The sentencing judge.

11 MS. KRAMER: May I have a moment, your Honor?

12 THE COURT: Yes.

13 (Counsel conferring)

14 MS. KRAMER: Nothing further, your Honor.

15 THE COURT: Folks, why don't we take a 10-minute  
16 break. It is midafternoon, we will take 10 minutes. Please,  
17 leave your pads on your chairs and we will continue in 10.

18 (Continued on next page)

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Sweet - direct

1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness steps down)

4 MR. COOK: We ask the Court to instruct the witness  
5 not to speak with the prosecution team or his lawyer concerning  
6 the subject matter of his testimony while he is under  
7 cross-examination.

8 THE COURT: Yes.

9 The witness will not be speaking to the prosecution  
10 team at this point.

11 MS. KRAMER: Correct.

12 Your Honor, the postal inspectors have been assisting  
13 the government in this case. I have asked them to escort  
14 Mr. Sweet into the hallway and to not have any substantive  
15 conversations. So, I think rather than letting him float  
16 around unattended, if it is all right, with the Court's  
17 permission, they will escort him in and out but not have any  
18 substantive conversation with him.

19 MR. COOK: Your Honor, the instruction should include  
20 his counsel as well. He is represented by counsel who is here.

21 MR. MORVILLO: Your Honor, Richard Morvillo for  
22 Mr. Sweet.

23 We will refrain from talking to Mr. Sweet about the  
24 subject of his testimony, though I would ask if we could at  
25 least talk to him between now and the time that he takes the



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Sweet - direct

1 stand. He hasn't been asked any questions and I would like to  
2 at least chat with him a little about his state of mind.

3 THE COURT: But not about the subject of his  
4 testimony.

5 MR. MORVILLO: Not about the subject of his testimony.

6 THE COURT: Okay. That's fine.

7 MR. MORVILLO: Thank you.

8 THE COURT: We will we will continue in 10.

9 MR. WEDDLE: Sorry, your Honor. One thing?

10 THE COURT: Yes.

11 MR. WEDDLE: Along the same lines of what was raised  
12 by Ms. Lester before the last break, we heard in this session  
13 of Mr. Sweet's testimony about a statement that he attributed  
14 to Mr. Wada regarding Mr. Wada's access to planning documents  
15 and the IIS system. If I am not mistaken, that appears nowhere  
16 in the 3500 material, and so I would welcome an explanation for  
17 why that is and why that's never been disclosed before the  
18 witness testified on the stand.

19 THE COURT: Okay. I will ask counsel to confer about  
20 that and let me know if there is an issue.

21 MS. KRAMER: Thank you, your Honor.

22 THE COURT: Thank you.

23 (Recess)

24 MS. KRAMER: Your Honor, should we get the witness on  
25 the stand or are there any matters to take up?

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Sweet - direct

1 THE COURT: Does anybody have anything to address?  
2 You can bring him in.  
3 MS. KRAMER: Thank you.  
4 (Continued on next page)

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J2K5mid6

Sweet - cross

1 (Jury present)

2 THE COURT: Please, be seated.

3 We are now ready for cross-examination.

4 Mr. Cook.

5 CROSS EXAMINATION

6 BY MR. COOK:

7 Q. Mr. Sweet, my name is Steve Cook. I represent Jeffrey  
8 Wada. I want to start by following up on some of the questions  
9 the prosecutor just finished asking you.

10 Would it be fair to say that you are willing to lie  
11 when you believe it will save you money?

12 A. I have in the past, yes.

13 Q. And you'll lie when you believe it will help your career?

14 A. I have in the past, yes.

15 Q. You will lie when you believe it will get you out of  
16 trouble?

17 A. Yes.

18 Q. You will create fake documents in order to obtain a  
19 mortgage?

20 A. I did, yes.

21 Q. And by doing that defraud a financial institution?

22 A. I did, yes.

23 Q. You will create fake documents also to get out of trouble,  
24 right?

25 A. I did in connection with the fake list, yes.

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Sweet - cross

1 Q. You will lie to your employers?

2 A. Yes.

3 Q. You will even tell lies involving your wife and your father  
4 if you think it will help you, right?

5 A. I did.

6 Q. You are willing to tell lies to the lawyers who were  
7 investigating your conduct in connection with this case?

8 A. Yes, I did.

9 Q. You lied to them repeatedly, right?

10 A. Yes, I did.

11 Q. You lied even to the prosecutors in order to minimize the  
12 consequences of the other crimes that you didn't disclose to  
13 them?

14 A. I did not tell them when I first realized but I did tell  
15 them the truth.

16 Q. You are willing to tell lies in order to keep the  
17 cooperation agreement that you signed with the government?

18 A. No. That's not the case. My obligation under the  
19 cooperation agreement is only to tell the truth.

20 Q. It is your testimony that you would draw the line at a lie  
21 told for the purpose of preserving your cooperation agreement  
22 with the government; is that right?

23 A. No, that's not -- that's not the case.

24 Q. You wouldn't do that?

25 A. If I tell a lie I would be in violation of my cooperation

J2K5mid6

Sweet - cross

1 agreement. I am obligated under that cooperation agreement to  
2 only testify truthfully.

3 Q. You knowingly violated your cooperation agreement in this  
4 case, haven't you?

5 A. I don't know how the prosecutors determine that. I told  
6 them what I had done. It's their determination. I don't know  
7 what is in their head.

8 Q. Well, let's talk about what some of your obligations are  
9 under that agreement. One is that you tell them the truth,  
10 correct?

11 A. Yes.

12 Q. Another requirement is that you disclose all past criminal  
13 conduct, correct?

14 A. Yes.

15 Q. Another requirement, not only of your cooperation agreement  
16 but the conditions of your release on bond, is that you commit  
17 no further crimes, correct?

18 A. Yes.

19 Q. That was a condition of your cooperation agreement, right?

20 A. Yes.

21 Q. And having signed that cooperation agreement you then filed  
22 a false tax return in October of 2018, correct?

23 A. Yes, I did.

24 Q. You did that after you signed the cooperation agreement?

25 A. Yes, I did.

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Sweet - cross

1 Q. You did that after you signed a cooperation agreement that  
2 required you to commit no further crimes?

3 A. Yes, I did.

4 Q. And you did that because you did not want to lose your  
5 cooperation agreement?

6 A. Yeah. That's -- I mean, I did it thinking I could fix it  
7 later because I was obligated to amend my taxes and I thought I  
8 could do it all at the same time.

9 Q. When you sign a tax return you are aware that you sign it  
10 under penalty of perjury, correct?

11 A. Yes, sir.

12 Q. So you committed perjury when you filed a false tax return  
13 in October of 2018, just a few months ago, correct?

14 A. Yes.

15 Q. And you did that after you agreed with the government that  
16 you would commit no further crimes?

17 A. Yes.

18 Q. You understood at the time as well that the only reason you  
19 are not in custody right now is because you are out on bond  
20 that requires you, obligates you to commit no further crimes,  
21 right?

22 A. That's right.

23 Q. So you violated the conditions of your release when you  
24 filed that false tax return?

25 A. I don't know what constitutes a crime or not as it relates

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Sweet - cross

1 to tax evasion.

2 Q. You know perjury is a crime, right?

3 A. Yes.

4 Q. And you know when you filed the false tax return and you  
5 signed it you committed perjury, right?

6 A. I know I signed a false tax return, yes.

7 (Continued on next page)

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J2kdmid7

Sweet - cross

1 Q. And perjury is a felony, isn't it?

2 A. Again, I don't know -- I don't know what constitutes a  
3 crime under that. I don't know.

4 Q. I just want to make sure I understand your testimony.

5 So it's your understanding as you sit here today that  
6 you're not sure if committing perjury when you sign a false tax  
7 return is a crime or not?

8 A. I know I signed a false tax return.

9 Q. But you're not sure if it is a crime?

10 A. I'm not -- it's not my determination. It's not my -- I  
11 can't -- I'm not the person who decides what's a crime or not.

12 Q. I understand that completely, Mr. Sweet, and I certainly  
13 don't want you to speculate about what other people would do.  
14 My question is what your understanding is.

15 As you sit here today, is it your understanding that  
16 committing perjury is a crime?

17 A. I know I filed a false tax return. I know what the  
18 statement was on that tax return. I disclosed that. I agreed  
19 to amend that tax return, and I knew it was wrong.

20 Q. Did you know it was a crime?

21 A. Again, I don't know. I don't know what's a crime or not,  
22 and when it comes down, I don't know what meets the definition  
23 of a crime or not. Like I said, I knew it was wrong. I knew  
24 it was wrong when I did it. I know it's wrong now.

25 Q. You understand, perjury is the same offense as, for



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Sweet - cross

1 example, lying as a witness in federal court? You are  
2 violating the oath that you took in committing perjury, right?

3 A. Yes.

4 Q. Are you unsure as to whether or not that is a crime?

5 A. I certainly know that's a crime.

6 Q. You know that's a crime?

7 A. Yes.

8 Q. Are you aware of different types of perjury, perjury with  
9 tax is not a crime; testifying under oath in court, that kind  
10 of perjury is a crime?

11 A. I know that if I lie in court, that is a complete violation  
12 of my cooperation agreement, that it would get torn up here. I  
13 am obligated -- I am here only to tell the truth.

14 Q. Why is it that you believe your cooperation agreement would  
15 be torn up if you told a lie in court?

16 A. Because my cooperation agreement says that I will provide  
17 truthful evidence, if asked to testify in court.

18 Q. But your cooperation also says that you must disclose all  
19 prior criminal conduct and not commit any crimes. Was your  
20 cooperation agreement torn up?

21 A. I have disclosed all of my prior criminal conduct --

22 Q. Was your cooperation agreement torn up?

23 A. No, it was not.

24 Q. You're still operating, testifying pursuant to the same  
25 cooperation agreement you signed over a year ago, correct?

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Sweet - cross

1 A. Yes.

2 Q. And notwithstanding your admission to violating that  
3 cooperation agreement on multiple occasions, the government has  
4 not torn it up, right?

5 A. Again, I can't speak for the U.S. Attorney's Office on what  
6 they determine to be a crime or not. As mentioned earlier, my  
7 cooperation agreement explicitly states that they cannot and do  
8 not protect me from any tax consequences, any future  
9 prosecution of the tax crime that I've admitted to. I'm  
10 obligated to amend my returns.

11 Q. Are you finished?

12 A. Yes.

13 Q. Let me try --

14 MS. KRAMER: Objection. Argumentative.

15 Q. Let me try my question again.

16 A. OK.

17 Q. Notwithstanding your admission to violating the cooperation  
18 agreement on multiple occasions, the government has not torn up  
19 that agreement, correct?

20 A. My cooperation agreement is still in place, yes.

21 Q. At the beginning of the day yesterday, you acknowledged  
22 that you pled guilty to two crimes, and you did that again just  
23 a few minutes ago, right?

24 A. Yes.

25 Q. And in response to the prosecutor's question, you testified

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Sweet - cross

1 that there are other people involved in that criminal activity,  
2 correct?

3 A. Yes.

4 Q. And would it be fair to say that the criminal conduct to  
5 which you pled guilty began around April 2015, when you left  
6 the PCAOB?

7 A. Yes.

8 MR. COOK: Can we put up Government Exhibit 1506 in  
9 evidence.

10 Q. Do you recognize this document?

11 A. Yes, I do.

12 Q. You were shown it yesterday, right?

13 A. Yes, sir.

14 Q. And you identified the individuals on Exhibit 1506 as what  
15 you call the core group, right?

16 A. Yes.

17 Q. And in connection with the crimes that you testified about,  
18 you said that you had direct discussions or communications with  
19 Mr. Middendorf, right?

20 A. Yes.

21 Q. Face-to-face?

22 A. Yes.

23 Q. Email?

24 A. Yes.

25 Q. Phone calls?

J2kdmid7

Sweet - cross

1 A. I don't remember phone calls with Mr. Middendorf.

2 Certainly maybe.

3 Q. Conference calls with Mr. Middendorf?

4 A. Yes. Yes.

5 Q. OK. And with regard to Mr. Whittle, emails with  
6 Mr. Whittle in furtherance of the crimes that you testified  
7 about?

8 A. Yes.

9 Q. Text messages?

10 A. I don't -- Tom and I didn't usually text each other. I  
11 don't remember.

12 Q. Phone calls?

13 A. Yes.

14 Q. Conference calls?

15 A. Yes.

16 Q. Face-to-face meetings.

17 Please answer audibly.

18 A. Yes.

19 Q. And with regard to Mr. Britt, the top row far right, you  
20 had direct face-to-face communications with Mr. Britt in  
21 connection with the criminal activity you testified about?

22 A. Yes.

23 Q. Emails with Mr. Britt?

24 A. Yes.

25 Q. Phone calls?

J2kdmid7

Sweet - cross

1 A. Yes.

2 Q. Did you have any text communications with him about this?

3 A. Not that I remember.

4 Q. Conference calls?

5 A. Yes.

6 Q. And with regard to Ms. Holder, face-to-face conversations?

7 A. Yes.

8 Q. About the activity that you have testified about?

9 A. Yes.

10 Q. Emails?

11 A. Yes.

12 Q. Phone calls?

13 A. Yes.

14 Q. Text messages?

15 A. Yes.

16 Q. Conference calls?

17 A. Yes.

18 Q. And with regard to Mr. Wada, did you personally exchange  
19 any text messages with Mr. Wada about the conduct that you've  
20 testified about for the past two days?

21 A. No.

22 Q. Exchange any emails with him directly about the conduct  
23 you've testified about?

24 A. Just that my emails were forwarded to him from Cindy.

25 Q. So no direct communication via email with Mr. Wada?

J2kdmid7

Sweet - cross

1 A. No.

2 Q. Face-to-face meetings with Mr. Wada?

3 A. No.

4 Q. Phone calls with Mr. Wada?

5 A. No, not that I remember.

6 Q. Do you see Mr. Wada sitting over there?

7 A. Yes.

8 Q. You know him, right?

9 A. I knew him from my time at the PCAOB.

10 Q. Prior to your testimony in this case, when was the last  
11 time you laid eyes on Mr. Wada?

12 A. I don't remember the specific date but likely at one of the  
13 PCAOB trainings. The last one I went to was in March of 2015.

14 Q. And you left the PCAOB in April 2015?

15 A. Yes.

16 Q. And that's when you just testified the criminal activity,  
17 as you've described it, began, correct?

18 A. Yeah.

19 Q. So you haven't laid eyes on him other than in this  
20 courtroom since April -- or, I'm sorry, March 2015, correct?

21 A. Yes.

22 Q. And that was I believe you said at a conference, do you  
23 think?

24 A. Yeah.

25 Q. To your knowledge, did Mr. Middendorf have any

J2kdmid7

Sweet - cross

1 communications with Mr. Wada about the conduct that you've  
2 testified about over the past two days?

3 A. No, not that I'm aware of.

4 Q. To your knowledge, did Mr. Whittle have any contact with  
5 Mr. Wada about the conduct that you have testified about over  
6 the past two days?

7 A. Not that I'm aware of.

8 Q. The same question for Mr. Britt?

9 A. No, not that I'm aware of.

10 Q. The only direct contact that you have testified about  
11 between any members of the core group and Mr. Wada was with  
12 Cindy Holder, correct?

13 A. Yes.

14 Q. Now, you testified that part of the reason why you shared  
15 confidential information from the PCAOB with your other KPMG  
16 partners was because I think you said you believed it was  
17 expected of you; is that right?

18 A. That's right, but I also knew that it advanced my career,  
19 made me look good.

20 Q. I think you testified that you believed you were under some  
21 pressure to give up the information?

22 A. I certainly felt pressure my first week.

23 Q. You testified about how you think people made you feel like  
24 your paycheck or your job might depend upon it, giving up the  
25 information, correct?

J2kdmid7

Sweet - cross

1 A. That was told to me.

2 Q. When you were first considering a job at KPMG, I believe it  
3 came through a recruiter, right?

4 A. Yes.

5 Q. In your first contact with that recruiter, did that  
6 recruiter suggest to you in any way, shape or form that it  
7 would be expected of you to bring confidential PCAOB  
8 information with you to KPMG?

9 A. No.

10 Q. Did the recruiter suggest to you in any manner whatsoever  
11 that you should or it would be expected of you to download  
12 confidential PCAOB information and take it with you to KPMG if  
13 you were to get a job there?

14 A. No.

15 Q. In your interviews with KPMG, as part of the application  
16 process, at that point did anyone suggest to you that it would  
17 be expected of you to give up confidential PCAOB information?

18 A. No.

19 Q. Did anyone tell you that you should download information  
20 and bring it with you?

21 A. No.

22 Q. So when you accepted your job -- accepted your offer at  
23 KPMG, you had no expectation whatsoever of being required to  
24 reveal confidential information as part of your job?

25 A. No.



J2kdmid7

Sweet - cross

1 Q. And you felt no pressure from anybody at KPMG, or acting at  
2 KPMG's behest, prior to starting your job there to do anything  
3 improper with regard to your obligations to the PCAOB?

4 A. No.

5 Q. So, your decision, then, to download what you contend to be  
6 highly confidential PCAOB information into a personal hard  
7 drive before you left the PCAOB, that was not prompted by any  
8 pressure, suggestion or insinuation of any kind from anybody at  
9 KPMG that you would be expected to bring that information with  
10 you?

11 A. It was entirely my decision.

12 Q. It was all you, right?

13 A. Yes.

14 Q. And you decided to use that PCAOB information at KPMG  
15 before you even left the PCAOB, right? That was the whole  
16 purpose for you downloading it was to use it?

17 A. Yes.

18 Q. Before your first lunch with any KPMG partner, you had  
19 already made the decision, and taken action in furtherance of  
20 that decision, to use confidential PCAOB information to advance  
21 your own career at KPMG?

22 A. Yes.

23 Q. That didn't require any pressure, any threats, at all for  
24 you to make that decision?

25 A. I chose to take that information on my own.

J2kdmid7

Sweet - cross

1 Q. And this wasn't your first time stealing confidential  
2 information from an employer, was it?

3 A. I had done the same thing at PwC, yes.

4 Q. Did -- I think we know the answer to this but I'll ask it:  
5 Did anyone at the PCAOB suggest to you that they wanted you to  
6 take PwC information with you and bring it to the PCAOB?

7 A. No, sir.

8 Q. That was all you as well?

9 A. Yes.

10 Q. Let me ask you a little bit about your interactions with  
11 Mr. Wada.

12 Were you ever on the same inspection team together?

13 A. Nope.

14 Q. Did you ever hang out together?

15 A. We did not.

16 Q. Ever talk on the phone -- and I'm speaking of when you were  
17 at the PCAOB -- talk on the phone?

18 A. No.

19 Q. Ever text each other?

20 A. No.

21 Q. Go out to lunch or dinner?

22 A. Not that I remember.

23 Q. Go get drinks after work?

24 A. Not that I remember.

25 Q. Did you ever meet each other's families?

J2kdmid7

Sweet - cross

1 A. No.

2 Q. You both live in California, right?

3 A. Yes.

4 Q. He has never been up to your house or your cabin in Shaver  
5 Lake?

6 A. No.

7 Q. Are you Instagram or Facebook friends or other social media  
8 connections?

9 A. No, sir.

10 Q. Let's talk about after you joined KPMG.

11 Jeff Wada was still working at the PCAOB, correct?

12 A. Yes.

13 Q. Did you tell Mr. Wada before you left the PCAOB that you  
14 were going to take confidential PCAOB information with you?

15 A. No, I did not.

16 Q. Did you -- did Jeff Wada even know you were leaving before  
17 you left, if you know?

18 A. I don't know.

19 Q. You didn't reach out to him and let him know you were  
20 leaving, did you?

21 A. No.

22 Q. He wasn't amongst the PCAOB contacts that you forwarded to  
23 yourselves so that you could keep in touch, was he?

24 A. No, he was not.

25 Q. And I'm assuming with regard to after you left PCAOB and

J2kdmid7

Sweet - cross

1 were at KPMG, there were no phone calls, emails, texts,  
2 lunches, dinners, drinks, any contact at all with Mr. Wada by  
3 you?

4 A. Just through Cindy.

5 Q. Everything was through Cindy?

6 A. Yes.

7 Q. You never discussed with Mr. Wada any scheme to defraud the  
8 United States, did you?

9 A. Just through Cindy and, no, not using those words. I mean,  
10 I certainly encouraged his behavior through the reinforcement  
11 that I sent on emails that I knew would be forwarded, text  
12 messages I sent to Cindy, conversations with Cindy.

13 Q. Well, we're going to talk about all of that. But my  
14 question is your direct communications with Mr. Wada, you never  
15 discussed with him a scheme to defraud the United States or the  
16 SEC in any words whatsoever?

17 A. I didn't discuss with him directly.

18 Q. You never discussed with him, directly, a scheme to defraud  
19 the PCAOB, right?

20 A. Again, I didn't speak with him directly.

21 Q. So let's talk about the person who funneled this  
22 information to you, Cindy Holder.

23 A. OK.

24 Q. You testified that I believe you met her in 2011?

25 A. I believe that was the first year, yes.

J2kdmid7

Sweet - cross

1 Q. And you were on her -- you were on her first inspection?

2 A. Yes, that's right.

3 Q. Were you -- and you had been there a couple of years,  
4 right?

5 A. Yes.

6 Q. Were you a mentor to her?

7 A. She actually worked for me on that first inspection. We  
8 worked on the same team, yes.

9 Q. So you were supervising her?

10 A. I was more senior than her, yes.

11 Q. You were also friends?

12 A. Yes, we were.

13 Q. You worked together in London?

14 A. Yeah.

15 Q. You worked together in London with Bob Ross and August  
16 Bellome?

17 A. Mm-hmm.

18 Q. You have to answer "yes" or "no."

19 A. Yes.

20 Q. It's your testimony that every bit of confidential PCAOB  
21 information that you claim came to you from Jeff Wada was  
22 funneled through Cynthia Holder, right?

23 A. Yes.

24 Q. You received no PCAOB confidential information that you  
25 believed was from Jeff Wada from any other source than Cindy

J2kdmid7

Sweet - cross

1 Holder?

2 A. Yeah, that's right. Yes.

3 Q. And it's your -- it's been your testimony, I think,  
4 repeatedly that Ms. Holder told you that Mr. Wada gave her  
5 confidential PCAOB information, correct?

6 A. I'm sorry. Would you ask that again?

7 Q. Sure. It's your understanding from Ms. Holder that Jeff  
8 Wada gave her confidential information?

9 A. It's more than my understanding, but, yes, that's right.

10 Q. Well, it's more than your understanding. You were not --  
11 withdrawn.

12 Is it your understanding that all of the confidential  
13 PCAOB information that Jeff gave to Cindy who then gave to you  
14 was delivered to Cindy over the telephone?

15 A. Telephone, text messages, yes.

16 Q. Are you aware of any confidential information delivered by  
17 Jeff Wada to Cindy Holder over text message?

18 A. I know that the text messages were used to indicate like  
19 the grocery list or the grocery list was ready, that was the  
20 indication that ready to give you the confidential information.

21 Q. Yes, but my question was a little different.

22 Actual confidential PCAOB information, are you aware  
23 of any of it being conveyed by Jeff Wada to Cindy Holder via  
24 text message?

25 A. No.

J2kdmid7

Sweet - cross

1 Q. So all of the confidential information that Mr. Wada  
2 conveyed to Ms. Holder you understand was done over the phone?

3 A. Yes.

4 Q. And were you a participant in any of those phone calls?

5 A. Not -- not on those phone calls, just after those phone  
6 calls.

7 Q. You were not a participant on any of the phone calls in  
8 which Mr. Wada supposedly gave Ms. Holder confidential  
9 information?

10 A. I was not on those phone calls.

11 Q. And are you aware of whether there are any recordings of  
12 those phone calls?

13 A. No, I'm not aware.

14 Q. You have not heard any, right?

15 A. I have not.

16 Q. How about transcript, you know, verbatim transcript where  
17 he said, she said, did you see anything like that?

18 A. No, I have not.

19 Q. So when you say it's more than your understanding that Jeff  
20 Wada gave confidential information to Cindy Holder, your  
21 understanding is based solely, one-hundred percent, on what  
22 Cindy Holder told you, right?

23 A. Told me, showed me, forwarded to me, yes.

24 Q. Did Cindy Holder forward to you some documents that she  
25 obtained from Jeff Wada other than his résumé?

J2kdmid7

Sweet - cross

1 A. His résumé the day we got the January 9th --

2 Q. That wasn't confidential, was it, his résumé?

3 A. No.

4 Q. No. So did, again, did Cindy Holder forward to you any  
5 confidential information that she claimed she got from Jeff  
6 Wada, email or text message, or regular mail?

7 A. Umm, I saw Cindy's notes from her conversations. She told  
8 me exactly what Jeff had said. And when I pressed her and  
9 tried to understand why and how he got access, I remember  
10 seeing the text message about the grocery list.

11 Q. But let me try it again.

12 Actual documents that Jeff Wada sent to Cindy Holder,  
13 text message, email, regular mail, did you ever see that?

14 A. No. Like I said, just the notes from those --

15 Q. Those are notes that she wrote, right?

16 A. Yes.

17 Q. Those aren't -- that's not Jeff Wada's handwriting, is it?

18 A. No. Cindy's notes, that's right.

19 Q. So you have no -- you yourself, sitting there today, you  
20 have no firsthand knowledge that Jeff Wada was the source of  
21 any confidential PCAOB information; all comes from Ms. Holder?

22 A. Yes. It comes from Ms. Holder, yes.

23 Q. When you told the jury that -- and this was yesterday after  
24 Ms. Holder received the 2016 inspection list, that she gave it  
25 directly to you, you don't know that, do you? You don't know



J2kdmid7

Sweet - cross

1 that she gave it directly to you, do you?

2 A. I'm not sure what you mean. She -- I'm not sure what you  
3 mean.

4 Q. Let's assume for a second that she got it from somebody  
5 else. You don't know that she gave it to you as soon as she  
6 received it, do you? You don't know how long she had it?

7 A. Well, she told me she had just gotten off the phone with  
8 Jeff Wada, so yes.

9 Q. That's what she told you?

10 A. Yes.

11 Q. You were interviewed on February 14, 2017, correct?

12 A. Yes.

13 Q. You talked about that for a few minutes just an hour or so  
14 ago.

15 You remember that interview pretty clearly?

16 A. Yes.

17 Q. Who conducted it?

18 A. The call was with Mark Rubino from KPMG's internal counsel.

19 Q. You didn't say anything about Mr. Wada in that interview,  
20 right?

21 A. I lied to him during that interview.

22 Q. Just so I'm clear, this interview took place eleven days  
23 after you claim to have received the 2017 final inspection  
24 list?

25 A. Yes.

J2kdmid7

Sweet - cross

1 Q. Less than two weeks later?

2 A. Yes.

3 Q. And, in fact, you told Mr. Rubino that you were being  
4 one-hundred percent open and honest, right?

5 A. I don't know if I said those words. I don't remember  
6 saying that.

7 Q. Do you remember saying something like that, that you were  
8 telling the truth?

9 A. I don't remember what I told him.

10 Q. Do you remember telling the government in one of your  
11 interviews that you told him that?

12 A. I don't remember. I may have. I don't remember. I know I  
13 lied to him, and I lied to him on multiple occasions.

14 Q. Let me show you what's been marked for identification as  
15 Defense Exhibit 3522-29.

16 Do you have it up on your screen?

17 A. Yes, sir.

18 Q. I'm not going to ask you to read it out loud. I'm going to  
19 direct your attention -- do you see, just underneath the  
20 typewritten text about a third of the way down the page?

21 A. Yes.

22 Q. Do you want to read that to yourself.

23 A. OK.

24 Q. Did you read the handwritten text?

25 A. Yes.

J2kdmid7

Sweet - cross

1 MR. COOK: Turn that off, please.

2 Q. Does that refresh your recollection as to whether you told  
3 Mr. Rubino that you were being one-hundred percent open and  
4 honest?

5 A. Those are my notes. No, it does not.

6 Q. You don't think Mr. Rubino was writing things down that you  
7 didn't say, do you?

8 MS. KRAMER: Objection, your Honor.

9 THE COURT: Sustained.

10 BY MR. COOK:

11 Q. You told Mr. Rubino that there were lots of disgruntled  
12 people at the PCAOB; do you remember that?

13 A. I don't remember saying that, but yeah.

14 Q. I'm sorry?

15 A. I don't remember saying that. I may have. I don't  
16 remember it.

17 Q. You told Mr. Rubino that you can't imagine who sent the  
18 list to Cindy Holder?

19 A. I don't remember saying that. Again, I know I -- I lied to  
20 Mr. Rubino about who I knew to be the true source of the list  
21 and how Cindy got it and --

22 Q. It would be fair to say that your recollection or  
23 statements about your involvement in the stolen PCAOB  
24 confidential information have evolved over time?

25 A. I don't know what you mean by "evolved."

J2kdmid7

Sweet - cross

1 Q. Changed.

2 A. There are certainly things that I have been able to refresh  
3 my memory on as I've had a chance to look at actual documents,  
4 including some of the things that I had deleted that ended up  
5 being recovered.

6 Q. Those are in your meetings with the government?

7 A. I don't believe I'm allowed to answer questions about my  
8 meetings with internal -- with my own --

9 Q. And I don't want you to. I don't want you to.

10 A. OK.

11 Q. But did the government show you documents in your meetings  
12 with them that aided in your recollection?

13 A. Yes.

14 Q. And your recollection of what happened in 2015, '16 and  
15 '17, that has changed over time?

16 A. I don't know it has changed over time, but it has certainly  
17 become more clear and accurate as I have had a chance to go  
18 back and look at, like I said, the documents that I deleted.  
19 For example, I don't remember all 50 names of the issuers that  
20 I wrote down on February 3, 2017, but I know that was the photo  
21 I took. I see my own notes.

22 Q. Do you recall being interviewed after Mr. Rubino's  
23 interview by outside counsel for KPMG?

24 A. Yes.

25 Q. On more than one occasion?

J2kdmid7

Sweet - cross

1 A. Yes.

2 Q. Long interviews?

3 A. Yeah.

4 Q. I am going to focus your attention back to March 2016, when  
5 you claim Cindy Holder gave you the 2016 inspection list. OK?  
6 Let's focus on that time period.

7 A. OK.

8 Q. When you were asked about this incident by KPMG's lawyers,  
9 you told them that you didn't believe -- you didn't believe  
10 Cindy Holder when she told you that Jeff Wada was the source.

11 A. I don't --

12 Q. Did you say that?

13 A. I don't remember saying that, no.

14 Q. You don't remember saying that?

15 A. No.

16 Q. You thought that she might have come up with the list  
17 herself in order to add value to the firm; do you remember  
18 telling them that?

19 A. Oh, I think you are misunderstanding, sir. In my second  
20 phone conversation or before -- after I had spoken with Tom  
21 Whittle and David Britt and knew that the plan was to have a  
22 phone conversation then with Dave Middendorf and Tom Whittle  
23 and David Britt, I had another call with Cindy to say, all  
24 right, Cindy, tell me again how you got this information. I  
25 want to be sure this is what it is. Explain to me how you got

J2kdmid7

Sweet - cross

1 this, who you got this from.

2 And she said, Jeff Wada.

3 How did Jeff access this information? Where did it  
4 come from?

5 So I did have another call with Cindy that day to  
6 clarify, make sure I fully understood where this information  
7 was coming from, because I was about to get on a call with some  
8 very senior people from the firm.

9 Q. Your first reaction was to not believe her?

10 A. No.

11 Q. Right?

12 No?

13 A. No.

14 Q. You believed her the first time she told you Jeff Wada was  
15 the source?

16 A. Yes, I did.

17 Q. Let's take a look at -- well, let me ask you this.

18 Would reviewing the notes taken by KPMG's lawyers of  
19 your interview, might that refresh your recollection of what  
20 you said?

21 A. It might.

22 Q. Let's take a look at 3522-01, at page 27.

23 (Pause)

24 Go ahead and read the first line to yourself.

25 Do you see that?

J2kdmid7

Sweet - cross

1 A. Yeah, I see that.

2 MR. COOK: Go ahead and take it down.

3 Q. Does that refresh your recollection as to whether or not  
4 you had doubts that Jeff Wada was the source?

5 A. Again, I think that's being taken out of context. My  
6 doubts were not that Jeff Wada was the source. My doubts  
7 were -- I wanted confirmation from Cindy in March that this  
8 really is what she was saying it is.

9 Q. Did you think that Cindy Holder was trying to use this  
10 information to advance herself within KPMG?

11 A. Yeah. I mean, I was, too. Right? It sure made us both  
12 look very good.

13 Q. You -- you believed that Cindy Holder was manipulative?

14 A. I think there were times that -- yeah. Yes.

15 Q. For example, she knew that you were active in your church  
16 and that she used that knowledge --

17 MS. KRAMER: Objection.

18 Q. -- in order to --

19 MS. KRAMER: Objection, your Honor.

20 May we approach?

21 THE COURT: Yes.

22 (Continued on next page)

23

24

25

J2kdmid7

Sweet - cross

1 (At the sidebar)

2 MS. KRAMER: Your Honor, I'm not sure we know where  
3 this is going, but on the subject of Cindy Holder being  
4 manipulative, there is a particular issue that we have raised  
5 with counsel. We've gotten confirmation that the defense  
6 counsel does not intend to go into a particular area on cross,  
7 and it certainly seems like that is where this is headed and so  
8 we wanted to come to the sidebar.

9 Cindy Holder was -- is, to our understanding, married  
10 to a woman and lied to Mr. Sweet and others and described her  
11 spouse as a man. We've spoken with defense counsel about this.  
12 Both defendants' lawyers have represented that they don't  
13 intend to go into this, but this seemed where we were going and  
14 once the genie is out of the bottle there is no putting it  
15 back.

16 MR. COOK: I'm not going anywhere close to that, your  
17 Honor.

18 MS. MERMELSTEIN: I think to the extent that Ms.  
19 Holder had not been sort of open with him, the discovery of  
20 what had been an understood shared -- I think that he was taken  
21 back discovering that she was lying about her marriage in  
22 particular in light of what had up to that point been a kind of  
23 shared understanding of their shared views. And so I'm not  
24 saying it is going to go there, but it is very hard to thread  
25 this needle, I think, about being betrayed without walking into



J2kdmid7

Sweet - cross

1 the why, which I think is going to be about the status of her  
2 marriage.

3 MR. COOK: Your Honor, I don't even know that he felt  
4 betrayed about that. I had no information about that.

5 My examination is limited strictly -- and I'm getting  
6 there in the next two questions -- to a document, very  
7 manipulative document, that Cindy emailed -- that Cindy Holder  
8 sent him on his first day at KPMG. It had nothing to do about  
9 her relationship. I am not going to ask her any questions  
10 about whether he knew about it, was concerned about it, or felt  
11 betrayed by it.

12 THE COURT: What is the question about the church?

13 MR. COOK: She sent him an email, basically a prayer,  
14 that Mr. Sweet told the government that felt that was an  
15 attempt to manipulate him.

16 MS. MERMELSTEIN: In light of what he subsequently  
17 learned.

18 MS. KRAMER: Yes.

19 MR. COOK: That is nowhere in the 3500 material.  
20 Nowhere, your Honor.

21 MS. MERMELSTEIN: That's why we asked for a sidebar,  
22 to explain to you what you are about to head into.

23 MR. COOK: It is a little late. I am in the middle of  
24 my cross-examination. If they omitted statements from the  
25 cooperator from the 3500, I don't know how I can be held to

J2kdmid7

Sweet - cross

1 understand things that they chose not to disclose. I'm not  
2 sure if they're suggesting that the witness, in response to my  
3 question when I showed him this email, I am going to ask him  
4 did you believe this was an attempt to manipulate you. I don't  
5 know how that elicits anything other than a yes or no, and I  
6 will move on from there.

7 MS. MERMELSTEIN: At the time he received this.

8 MR. COOK: At the time he received it.

9 MS. MERMELSTEIN: It should be OK.

10 THE COURT: OK.

11 (Continued on next page)

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J2kdmid7

Sweet - cross

1 (In open court)

2 BY MR. COOK:

3 Q. Mr. Sweet, I believe my question was: Ms. Holder knew you  
4 were active in your church, correct?

5 A. Yes, she did.

6 Q. And you believed that she used that knowledge to manipulate  
7 you?

8 A. No. Nope, I don't think so.

9 Q. I would like to show you what's been marked for  
10 identification as Government Exhibit 500.

11 Mr. Sweet, do you see that email in front of you?

12 A. Yes.

13 Q. From Ms. Holder to you?

14 A. Yes.

15 Q. Do you recall this email?

16 A. Yes.

17 MR. COOK: I offer it.

18 MS. KRAMER: Objection, your Honor. Basis?

19 THE COURT: Are you using it to refresh?

20 MR. COOK: No, I'm using it to impeach. He just said  
21 he didn't feel like she was manipulating him.

22 MS. KRAMER: No inconsistency, your Honor.

23 THE COURT: No. I don't see -- at this point, I don't  
24 think it shows an inconsistency.

25 MR. COOK: OK. You can take it down.

J2kdmid7

Sweet - cross

1 BY MR. COOK:

2 Q. Mr. Sweet, do you recall receiving an email from Ms. Holder  
3 in which she included in that email a prayer for you on your  
4 first day at work?

5 A. Yes.

6 Q. Do you remember that?

7 And you believed that her sending you that email was  
8 part of an effort to get you to push her to get her a job at  
9 KPMG?

10 A. No. I -- Cindy and I were friends.

11 Q. Did you believe that that email that she sent you was part  
12 of an effort to get you to push for her to get a job at KPMG?

13 MS. KRAMER: Objection. Asked and answered.

14 MR. COOK: I didn't receive an answer, your Honor.

15 MS. KRAMER: Your Honor, the witness said "No."

16 THE COURT: Did you answer it?

17 THE WITNESS: I thought I did.

18 THE COURT: Did you say "no"?

19 THE WITNESS: Yes.

20 THE COURT: OK.

21 BY MR. COOK:

22 Q. Let me show you what's, for identification, 3522-03.

23 (Pause)

24 Do you recall when you met with the government that  
25 there were not only the prosecutors but postal inspectors

J2kdmid7

Sweet - cross

1 present?

2 A. Yes.

3 Q. Do you recall that they were taking notes?

4 A. Yes.

5 Q. And on some occasions they were typing notes?

6 A. Yes.

7 Q. You haven't had a chance to review any of those notes, have  
8 you?

9 A. No.

10 Q. I ask you if we could turn to page 5, the bottom paragraph.

11 I ask you to just read the sentence that begins with  
12 the word "he" to yourself.

13 (Pause)

14 MS. KRAMER: I am still going to raise an objection,  
15 your Honor. There has not been a foundation for refreshing.

16 (Pause)

17 MR. COOK: Impeachment by contradiction, your Honor.  
18 He said the opposite.

19 THE COURT: Overruled.

20 BY MR. COOK:

21 Q. Mr. Sweet, if you would please read -- your Honor, I would  
22 like to offer at least this limited portion.

23 MS. KRAMER: Your Honor, I object to this being  
24 offered. I believe that the witness -- counsel can confront  
25 the witness with an inconsistent statement but cannot offer

J2kdmid7

Sweet - cross

1 this document as extrinsic evidence.

2 MR. COOK: I'll read it, your Honor.

3 THE COURT: OK.

4 MS. KRAMER: I think, your Honor, he can ask the  
5 witness if he said what is in the document.

6 THE COURT: You can ask him to explain it.

7 BY MR. COOK:

8 Q. Mr. Sweet, do you see the text in front of you that's been  
9 written --

10 MS. KRAMER: Your Honor, I'm sorry. I am going to  
11 object to the reading of a document that's not in evidence.

12 MR. COOK: Your Honor, I don't know how I can impeach  
13 him without reading it or offering it. He said one thing. The  
14 document says something else.

15 THE COURT: I think you need to start with refreshing.

16 Does this refer to the email that you asked about?

17 MR. COOK: No. This is the 3500 material from an  
18 interview that he gave to the government.

19 BY MR. COOK:

20 Q. Mr. Sweet, please read the text in front of you to  
21 yourself, and let me know if that refreshes your recollection  
22 as to what you told the government.

23 (Pause)

24 Have you had a chance to read it?

25 A. I'm almost finished.

J2kdmid7

Sweet - cross

1 (Pause)

2 OK.

3 Q. Did you tell the government, as part of an interview, that  
4 you felt that Cindy knew you were religious and said things to  
5 get close to you and that she would manipulate you to get you  
6 to push for a job?

7 A. That does not refresh my memory. There were certainly  
8 times I felt manipulated by Cindy, as I said earlier, but not  
9 as -- I don't remember it in the context of my faith.

10 MR. COOK: Your Honor, I would like to read that  
11 sentence from the document.

12 THE COURT: I thought you just did.

13 MR. COOK: I asked him if it refreshed his  
14 recollection. I would like to read from the actual document.

15 MS. KRAMER: Objection, your Honor.

16 THE COURT: You can read those couple of sentences.

17 BY MR. COOK:

18 Q. "He feels she knew he was religious and said things to get  
19 close to him. There were things Cindy would say to manipulate  
20 Sweet to push for her to get a job at KPMG."

21 Did I read that correctly?

22 A. You read that correctly. But when I think about that, I  
23 think about, for example, the phone call that Cindy called me  
24 when she was an inspector and asked me my --

25 Q. I am going to ask you to stop for a second. There is no

J2kdmid7

Sweet - cross

1 question pending. Let me ask another question and then you  
2 will get an opportunity to answer. OK?

3 A. OK.

4 Q. Now, remind us when the PCAOB writes a comment during an  
5 inspection, what does that mean?

6 A. The PCAOB will write a comment form when they believe there  
7 is a failure in the audit work.

8 Q. And you recall, or I believe you testified, that you  
9 received a phone call from Cindy after you had joined KPMG  
10 while she was still at PCAOB while she was on an active PCAOB  
11 inspection?

12 A. Yes.

13 Q. And she asked you whether or not she should write a  
14 negative comment. Do you recall that?

15 A. Yes.

16 Q. And you told her that in similar situations in the past, a  
17 comment had not been written, right?

18 A. Yes.

19 Q. She was on a -- was it a KPMG inspection?

20 A. Yes, it was.

21 Q. And that whole phone call from Ms. Holder to you asking you  
22 whether she should write a comment, you again thought she was  
23 trying to manipulate you as part of the that phone call?

24 A. That's what I was just about to reference earlier.

25 Q. You thought she was I think your words were blowing smoke.



J2kdmid7

Sweet - cross

1 Does that sound right?

2 A. I think Cindy had been an inspector long enough, and there  
3 was an existing review structure in place at the PCAOB while we  
4 were friends. She didn't need to call me to decide whether or  
5 not to write a comment.

6 Q. Especially when she's on a KPMG inspection and you are at  
7 KPMG, right?

8 A. Yes.

9 Q. She was just letting you know that she could be valuable to  
10 you, that's fair?

11 A. Yeah. Yes.

12 Q. And despite this attempt at manipulation, you thought she  
13 could be valuable to you at KPMG, as well?

14 A. Sorry. Would you say that again? Would you ask it again?

15 Q. Despite this attempt at manipulation, you nevertheless  
16 believed that she could be valuable to you at KPMG?

17 A. I thought Cindy was a very strong inspector.

18 Q. And when she sent you that email that we talked about with  
19 the prayer on your first day at KPMG, do you remember  
20 responding to her?

21 A. I don't remember how I responded.

22 MR. COOK: Let's take a look at Government Exhibit  
23 501.

24 Could you blow up the top email, the top thread.

25 There we go.

J2kdmid7

Sweet - cross

1 Q. Mr. Sweet, I am going to ask you to just take a look at  
2 that, just read it to yourself, and tell me if it refreshes  
3 your recollection on how you responded to Ms. Holder's email?

4 (Pause)

5 Did you have a chance to read it?

6 A. Yes.

7 Q. Does that refresh your recollection?

8 MR. COOK: Go ahead and take it down.

9 Q. How did you respond?

10 A. I -- yes, I responded, "Thanks, Cindy."

11 Q. You told her she was amazing?

12 A. Yes.

13 Q. And you told her you were going to share her résumé within  
14 KPMG?

15 A. Yes.

16 Q. And you did share her résumé to other KPMG partners, right?

17 A. I did.

18 Q. And you were instrumental in getting her a job at KPMG?

19 A. I was directly involved, as I mentioned yesterday.

20 Q. And you also told her, prior to her leaving, about how you  
21 had stolen PCAOB information before you left, right?

22 A. Yes.

23 Q. And you gave her that information in such a way as to  
24 convey to her, maybe without telling her directly, that she  
25 should do the same thing?

J2kdmid7

Sweet - cross

1 A. Yes.

2 Q. And you testified yesterday that you did this because you  
3 wanted her to be successful in her job at KPMG?

4 A. Yes.

5 Q. That wasn't all of it, though, was it?

6 It wasn't the only reason you told her to take  
7 confidential information, was it?

8 A. I had taken confidential information already. I didn't  
9 think that Cindy was going to have -- or take anything that I  
10 didn't already have.

11 Q. Well, she was still there after you left, right?

12 A. Yes.

13 Q. New information is being created every day at the PCAOB,  
14 right?

15 A. Comment forms, but the firm receives those comment forms.

16 Q. You knew that if she brought confidential information with  
17 her when she joined KPMG, that would help you as well as help  
18 her?

19 A. Yeah.

20 Q. Let me show you what's already been admitted as Government  
21 Exhibit 510.

22 This is that email we talked -- or you spoke with the  
23 prosecutor about yesterday with the subject line "Anonymous  
24 email." Do you remember this?

25 A. Yes.

J2kdmid7

Sweet - cross

1 Q. This is the one from Ms. Holder's personal email account to  
2 your personal email account?

3 A. Yes.

4 Q. This didn't come from Mr. Wada, did it?

5 A. No.

6 Q. And this was containing confidential PCAOB information,  
7 right?

8 A. Yes.

9 MR. COOK: Thank you. You can take it down.

10 Q. In addition to being I think you said -- you testified on  
11 direct Ms. Holder was smart, and we established that you  
12 believed she was manipulative, you knew that Ms. Holder had  
13 also been a special agent with the FBI?

14 A. Yes, I did.

15 Q. Did she tell you about her experience working in organized  
16 crime and intelligence gathering?

17 MS. KRAMER: Objection.

18 THE COURT: Sustained.

19 BY MR. COOK:

20 Q. I'm going to show you what's been marked for identification  
21 as Government Exhibit 503.

22 Do you see the document on your screen?

23 A. Yes.

24 Q. Is this an email exchange that you had with Ms. Holder?

25 A. Yes.

J2kdmid7

Sweet - cross

1 Q. In May of 2015?

2 A. Yes.

3 Q. And in this email exchange, Ms. Holder attached her résumé?

4 A. Yes.

5 MR. COOK: I offer it.

6 THE COURT: Any objection?

7 MS. KRAMER: May we have one moment, your Honor?

8 THE COURT: Yes.

9 (Pause)

10 MS. KRAMER: No objection.

11 THE COURT: Government Exhibit 503 is received -- I  
12 guess it will be renumbered as a defense exhibit.

13 MR. COOK: We will renumber it, your Honor.

14 (Government's Exhibit 503 received in evidence)

15 MR. COOK: If we could return to the résumé that was  
16 attached to the email.

17 The next page. That part. Bring that out.

18 BY MR. COOK:

19 Q. You reviewed this résumé when you received it from  
20 Ms. Holder, correct?

21 A. Yes.

22 Q. You even made comments to it, right?

23 A. Yes.

24 Q. Would you read Ms. Holder's experience as a special agent  
25 of the FBI as she describes it?

J2kdmid7

Sweet - cross

1 A. "Federal Bureau of Investigation, San Francisco,  
2 California.

3 "Special Agent.

4 "Received leave of absence from Pricewaterhouse;

5 "Member of the organized crime/narcotics squad;

6 "Responsible for intelligence gathering,  
7 investigation, documentation and prosecution of drug, organized  
8 crime and money laundering cases. This included coordination  
9 with local district and assistant district attorneys as well as  
10 testifying before grand jury members;

11 Received extensive accounting training in money  
12 laundering, computer fraud, forensic accounting, and other  
13 specialized accounting areas at FBI Academy in Quantico,  
14 Virginia."

15 Q. Thank you.

16 MR. COOK: Take it down.

17 Q. Have you ever heard the word "tradecraft"?

18 MS. KRAMER: Objection, your Honor.

19 THE COURT: Overruled.

20 A. No, I don't know. Tradecraft?

21 Q. Tradecraft, have you heard that term? It is more applied  
22 to techniques and actions of undercover law enforcement  
23 intelligence agents, have you ever heard of that term in that  
24 context?

25 A. Not that I remember.

J2kdmid7

Sweet - cross

1 Q. But you testified an hour or so ago about a number of  
2 actions that you and Ms. Holder took to conceal your activities  
3 and the conduct that you have been talking about. Do you  
4 recall that?

5 A. Yes.

6 Q. That included burner phones?

7 A. Yes.

8 Q. It included secret codes using social media messaging?

9 A. Yes.

10 Q. It included advice from Ms. Holder on not just deleting  
11 confidential information from your computer but deleting  
12 certain documents from your computer?

13 A. Yes.

14 Q. She told you don't delete everything, that will be  
15 suspicious, just delete the worst and leave some of it on  
16 there; do you remember that?

17 A. Yes.

18 Q. She told you -- I believe you testified about how to avoid  
19 being tricked by long pauses during interviews by  
20 investigators?

21 A. Yes.

22 Q. And did she tell you that the confidential information that  
23 she had stolen, she hid it inside of an electrical outlet in  
24 her home?

25 A. Yes, she told me that.

J2kdmid7

Sweet - cross

1 Q. She was angry when you didn't take similar precautionary  
2 measures?

3 A. Yes.

4 Q. Let's talk for a few minutes about the confidential  
5 information that you shared in 2015. We're going back in time  
6 a little bit.

7 A. OK.

8 Q. I am going to show you what's already been admitted as  
9 Government Exhibit 102.

10 Do you recognize this as the GNF Planning Profile for  
11 2015?

12 (Pause)

13 We can scroll down if you need to see more of it.

14 A. Do you mind scrolling to the left, if that is possible?  
15 I'm sorry, the left.

16 OK.

17 Q. Is that good?

18 A. Yes.

19 Q. Do you recognize it is as a 2015 GNF Planning Profile?

20 A. I see the date, and, yes, this looks consistent. I didn't  
21 recognize the name off the top.

22 Q. The GX102?

23 A. I don't recognize that or the other name to the right of  
24 it.

25 Q. Got it. That is just our computer operator.



J2kdmid7

Sweet - cross

1 A. OK.

2 Q. You said that you showed this document to Mr. Whittle,  
3 correct?

4 A. No, I didn't.

5 Q. You did not? You didn't show this to Mr. Whittle?

6 A. No.

7 Q. OK. Did you show it to Mr. Middendorf?

8 A. No, I did not.

9 Q. Did you show it to Mr. Britt?

10 A. No, I did not.

11 Q. Did you show it to any other KPMG audit partners?

12 A. Yes.

13 Q. Who did you show it to?

14 A. I showed it to Tom Garton.

15 Q. Who else?

16 A. I discussed it with other partners, but Tom Garton is the  
17 only one I can remember right now who I showed it to.

18 Q. He is the only one you actually showed the document to; am  
19 I understanding you correctly?

20 A. From what I can remember, yes.

21 Q. And when you say you discussed it with other KPMG partners,  
22 when you did that, did you make clear to them, or do you  
23 believe they understood that what you were talking about was a  
24 confidential PCAOB document?

25 A. Yes.

J2kdmid7

Sweet - cross

1 Q. Now, just so we're perfectly clear, you were not and have  
2 not suggested in any way that Mr. Wada was the source of this  
3 document, correct?

4 A. This document I took.

5 Q. The 2015 document?

6 A. When I left the PCAOB, yes.

7 Q. Look at Government Exhibit 824R, which I believe is in  
8 evidence.

9 Do you have that in front of you, sir?

10 A. Yes.

11 Q. Do you see the document in front of you?

12 A. Yes, I do.

13 Q. This is the email in which you said you got a call from an  
14 old colleague over the weekend, right?

15 A. Yes.

16 Q. And I believe you testified yesterday, when you were  
17 asked -- or you were asked by the prosecutor, who was the old  
18 colleague you were referring to; do you remember that?

19 A. Yes.

20 Q. And do you recall answering that you were referring to  
21 Cindy Holder who had in turn received a call from Jeff Wada; is  
22 that accurate?

23 A. Yes.

24 Q. Now, your testimony, however, again, is not based -- this,  
25 that Mr. Wada is the source, is not based on any first-hand

J2kdmid7

Sweet - cross

1 information; it's based on what Ms. Holder told you, right?

2 A. Yes, based on what Cindy told me.

3 Q. And your understanding that Mr. Wada is the source of this  
4 document assumes that Ms. Holder was telling you the truth?

5 A. Yeah. I wrote this email so I was the source of this  
6 document, but Jeff Wada was the one that Cindy had told me had  
7 given her this heads up about the big bank in Switzerland, yes.

8 Q. I appreciate that clarification. You wrote this email.

9 The information that we're talking about, though,  
10 information that your testimony is Cindy told you she got from  
11 Jeff, right?

12 A. Yes.

13 Q. And your assumption that Jeff Wada was indeed the source  
14 assumes that Ms. Holder was telling you the truth, correct?

15 A. Yes.

16 Q. And just so we're clear about this particular piece of  
17 information that you got from Cindy Holder, it did not include  
18 the name of any inspection targets, did it?

19 A. No.

20 Q. Let's take a look at what's been admitted as Government  
21 Exhibit 876.

22 MR. COOK: Your Honor, I see it is after 5 p.m. This  
23 would be a convenient stopping point.

24 THE COURT: OK. Why don't we break for the evening.

25 Folks, yeah, it's a little after 5. We'll break for

J2kdmid7

Sweet - cross

1 tonight. We'll have a full day tomorrow.

2 I wanted to raise the issue of Friday with you all. I  
3 have said generally we won't be sitting on Fridays, but I may  
4 raise the issue of possibly sitting Friday morning just to make  
5 progress getting through the trial. But I wanted to just put  
6 that out there, and then maybe tomorrow morning I can see  
7 whether anyone has a conflict. If you do have a conflict, you  
8 have already made plans or something for Friday, then we won't,  
9 since I said generally we'll be Monday to Thursday.

10 Does anyone know right now that they definitely could  
11 not do Friday?

12 You cannot?

13 JUROR: Well, I have a meeting but I could try to  
14 reschedule it.

15 THE COURT: You could reschedule it.

16 JUROR: Probably.

17 THE COURT: Is there anyone else who knows they could  
18 not do Friday.

19 JUROR: I could try to reschedule.

20 THE COURT: OK. I may ask about that tomorrow. We  
21 could do maybe just the morning, like 9:30 to 1 or something  
22 likes that.

23 Yes?

24 JUROR: Your Honor, for myself, I commute two hours.  
25 So to come in for two hours and then like, you know, that is a

J2kdmid7

1 bit heavy.

2 THE COURT: So you want to do a full day Friday.

3 JUROR: No, your Honor.

4 THE COURT: So you are saying it is an inconvenience?

5 JUROR: Pretty much.

6 THE COURT: OK. Well, anyway, I wanted to put it out  
7 there. We can talk about it tomorrow. And we'll be on track  
8 for tomorrow morning. We'll have coffee for you at 9, and then  
9 we will begin at around 9:30.

10 So, have a good night. Leave your pads on your  
11 chairs, and we'll see you tomorrow.

12 (Continued on next page)

J2kdmid7

1 (Jury not present)

2 THE COURT: You can step down.

3 You may be seated.

4 (Witness not present)

5 Is there anything people wanted to address before we  
6 break?

7 MS. KRAMER: Very briefly, your Honor.

8 I think that the government objects to reading from  
9 documents not in evidence in a way that makes plain that there  
10 are notes of federal agents that are being read from. So today  
11 the document was identified and described very specifically and  
12 it was very clear, in fact, announced to the jury that counsel  
13 is reading from it. There is, you know, a challenge I think in  
14 impeaching with a prior inconsistent statement, but there  
15 should be some effort made to make it not quite so obvious that  
16 you are reading from a document that is not in evidence under  
17 the circumstances when it is an issue that would not permit the  
18 offering or the proving by extrinsic evidence of the prior  
19 inconsistent statement --

20 (Continued on next page)

21  
22  
23  
24  
25

J2K5mid8

1 THE COURT: The prior inconsistent statement can  
2 actually come into evidence.

3 MS. KRAMER: But it should be: *Didn't you say in this*  
4 *interview blah-blah-blah; not: Take a look at this document*  
5 *that's marked for identification, I want to read these three*  
6 *sentences from it.*

7 I think that that is actually not okay. That's our  
8 objection to that.

9 THE COURT: Okay. Well, there was a question whether  
10 it was really inconsistent because the first questions  
11 generally about being manipulative, I don't know if they were  
12 focused enough to go to a specific statement here. But if it  
13 truly was an inconsistent statement it could come into  
14 evidence, however this was not a verbatim transcript, this was  
15 notes of a law enforcement officer.

16 Is your objection that you don't think it is fair to  
17 even say what it is?

18 MS. MERMELSTEIN: Yes. I think it is improper, your  
19 Honor. It is not appropriate for defense counsel to  
20 essentially testify to the jury that there are notes and that  
21 they are reading from them and that that is what the notes say.  
22 I think the way the question has to go is as follows. You say  
23 to the witness, *Isn't it true that you thought Ms. Holder is*  
24 *manipulative?* The answer is, *Yes/No/I don't know.* If there is  
25 an inconsistent statement you then say, *Well, didn't you meet*

J2K5mid8

1 with the government on that date? Didn't you say on that date  
2 blah-blah-blah? If he then says, Well, I did say that, then  
3 that's the end of it. If he says, I didn't say that, then you  
4 now have a prior inconsistent statement that can come in,  
5 subject to the proper foundation. Or, if he says, I don't  
6 remember, then you can say, Well, look at this document. Does  
7 it refresh your recollection? What you can't do is say to the  
8 jury, well, there are notes that a law enforcement agent took  
9 that say that are you not telling the truth.

10 That's not okay.

11 MR. COOK: Your Honor, there are a couple options.

12 I could have redacted the document and introduced the  
13 document. It was far easier, and I think frankly far less  
14 prejudicial to the government than to simply read the statement  
15 and the statement, I can't just read it without providing the  
16 context of what it is I'm reading. So, I think I did the bear  
17 minimum to impeach the witness. It was a clear inconsistency  
18 with his testimony. If the government would prefer that we  
19 introduce -- if this were to happen again, actually introduce a  
20 redacted form the document that contains the inconsistent  
21 statement along with the header that demonstrates what the  
22 source is, we can do that, but that seems unnecessarily  
23 cumbersome.

24 THE COURT: Right, but I do think that the government  
25 makes a fair point that you shouldn't represent that an FBI



J2K5mid8

1 agent wrote something down. You should say did you in fact  
2 meet with the government and isn't it true that you said X.

3 MR. COOK: That's fine, your Honor.

4 Any other issues you all want to talk about?

5 MS. MERMELSTEIN: No, your Honor.

6 THE COURT: Okay. Have a good night, everybody. See  
7 you tomorrow morning.

8 (Adjourned to February 21, 2019 at 9:30 a.m.)  
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